

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2853.10(a)(12), and Mayor's Order 2000-70, dated May 2, 2000, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the amendment of 17 DCMR Chapter 37 (Barber and Cosmetology), an amendment to 17 DCMR Chapter 33 (General Rules), the deletion of 17 DCMR Chapter 38 (Beauty Shops and Cosmetology), the deletion of 22 DCMR Chapter 8 (Barbershops and Barbering), and the deletion of 22 DCMR Chapter 9 (Beauty Shops and Cosmetology). This rulemaking action updates the Barber and Cosmetology regulations to reflect changes in the law and the occupations, including provisions for the licensure of the specialty cosmetology practices identified in D.C. Official Code § 47-2853.06.

Title 22 DCMR Chapter 8 is deleted.

Title 22 DCMR Chapter 9 is deleted.

Title 17 DCMR Chapter 38 is deleted.

Title 17 DCMR Chapter 33, section 3300.1, is amended by adding a new subsection (e) as follows:

(e) The Barber and Cosmetology Board established by the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code §47-2853.6 (c)) (2001).

Title 17 DCMR Chapter 37 is amended to read as follows:

Chapter 37 BARBER AND COSMETOLOGY

Secs.

- 3700 General Provisions
- 3701 Code of Ethics
- 3702 Licenses Required
- 3703 Qualification For Licensure
- 3704 Barber And Cosmetology Apprenticeships
- 3705 Demonstrators
- 3706 Term Of Licenses
- 3707 Examination
- 3708 Waiver Of Examination – Specialty Cosmetology Operator
- 3709 Waiver Of Examination – Barber Instructor
- 3710 Waiver Of Examination: Specialty Cosmetology Manager
- 3711 Licensure By Reciprocity Or Endorsement

- 3712 Applicants Educated In Foreign Countries
- 3713 Display Of License
- 3714 Prelicensure Supervised Practice
- 3715 [Reserved]
- 3716 Barbershops And Cosmetology Salons
- 3717 Facilities And Equipment
- 3718 Minimum Equipment
- 3719 Electrology
- 3720 Booth Rentals/Chair Rentals/Space Renting
- 3721 Multiple Licenses Not Required
- 3722 Requirements Of Schools Teaching Barbering,
Cosmetology And Specialty Cosmetology
- 3723 Board Approval And Certification Of Barber And Cosmetology Schools
- 3724 [Reserved]
- 3725 Service And Pricing Policy
- 3726 Massages And Spa Treatments
- 3727 Enforcement And Penalties
- 3799 Definitions

3700 GENERAL PROVISIONS

- 3700.1 The provisions of this Chapter shall be applicable to all applicants and persons licensed as barbers, cosmetologists, and specialty cosmetologists under the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code §§ 47-2853.71 - 47-2853.73, 47-2853.81 - 47-2853.83)(2001)) ("The Act"), and any building, part of a building, booth, chair, space, or other facility under the control of any person licensed under the Act and directly or indirectly used pursuant to the Act.
- 3700.2 Chapter 33 (General Rules) of this title shall supplement this chapter.
- 3700.3 The provisions of this chapter and the Act prevail in the event of a direct and irreconcilable conflict with the provisions of Chapter 33 of this title.
- 3700.4 Each section, and every part of each section of this chapter, shall be independent of every other section or part. If any section or part of a section is held to be void or ineffective, for any cause, the holding shall not affect any other section or part.

3701 CODE OF ETHICS AND STANDARDS OF PRACTICE

- 3701.1 This section shall be known as the Code of Ethics and Standards of Practice for all barbers, cosmetologists, and specialty cosmetologists.
- 3701.2 The barber, cosmetologist, or specialty cosmetologist shall accept responsibility for providing competent service with compassion and respect for human dignity.

- 3701.3 The barber, cosmetologist, or specialty cosmetologist shall exercise professional judgment in the use of evaluation and treatment procedures and may decline to perform a treatment if he or she believes the treatment would be harmful or unjustified.
- 3701.4 The barber, cosmetologist, or specialty cosmetologist shall provide the patron with accurate information regarding the profession and treatments rendered.
- 3701.5 The barber, cosmetologist, or specialty cosmetologist shall deal honestly with patrons and colleagues, and strive to report to the Board those persons who are deficient in character or competence, or who engage in fraud or deception.
- 3701.6 A barber, cosmetologist, or specialty cosmetologist shall continue to study, apply and advance scientific knowledge, make relevant information available to patrons, colleagues, and the public, obtain consultations, and use the talents of health professionals when required.
- 3701.7 A barber, cosmetologist, or specialty cosmetologist shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patron and the profession.
- 3701.8 A barber, cosmetologist, or specialty cosmetologist authorized to practice pursuant to the Act, shall not accept or perform professional services covered by the Act which the licensee knows or has reason to know he or she is not competent to perform.
- 3701.9 No licensee may provide services to the public if the licensee has a known infectious or contagious disease unless the licensee takes appropriate precautions and uses safeguards that prevent the spread of the disease to the public.
- 3701.10 Licensees shall take adequate and necessary precautions to protect the public from health and safety hazards when performing services.
- 3701.11 The barber or cosmetologist shall respect the client's right to privacy and shall not divulge confidential information without consent of the client or guardian unless required by law.

3702 LICENSES REQUIRED

- 3702.1 The following licenses or certificates of registration shall be issued to natural persons as required by the Barber and Cosmetology Board pursuant to D.C. Official Code §47-2853.8 (2001):

- (a) Barber;
- (b) Cosmetology operator;

(c) Specialty cosmetology operators, which include;

(1) Braider;

(2) Electrologist;

(3) Esthetician (Aesthetician); and

(4) Manicurist

(d) Barber, Cosmetology, or Specialty Salon Manager;

(e) Barber, Cosmetology, or Specialty Salon Owner;

(f) Demonstrators; and

(g) Barber, Cosmetology, or Specialty Independent Contract Owner as regulated by 17 DCMR §3719 *et seq.*, "Booth Rentals/Chair Rentals/Space Renting."

3702.2 Except as otherwise permitted, no person shall engage in the practice of barbering or cosmetology, or own or operate a salon or shop before the issuance of all required licenses.

3703 QUALIFICATION FOR LICENSURE

3703.1 To qualify for licensure under this chapter an applicant must meet the following requirements;

(a) Be eighteen (18) years of age;

(b) Have completed the tenth (10th) grade or higher, unless otherwise indicated;

(c) Pass the applicable examination(s);

(d) Meet the educational and experience requirements for the license applied for, as set forth in the subsections below; and

(e) Provide the board with verification of completion of the above requirements.

3703.2 An applicant for a license by examination as a cosmetology operator shall furnish proof satisfactory to the Board that the applicant has successfully completed:

(a) Fifteen hundred (1,500) hours of training in a licensed school or school otherwise acceptable to the Board, which shall include the following courses of study and hours:

<u>SUBJECT</u>	<u>HOURS</u>
Manicuring/Pedicuring	50
Pressing	100
Croquinole Wave/Styling	100
Braiding	35
Shampooing	40
Permanent Wave	150
Wet Curls	100
Facials/Massage	50
Scalp Treatments	25
Dye and Bleach	100
Haircutting	100
Hairpieces	25
Chemical Straightening	225
Electrology	75
Personal Hygiene	50
Ethics, Salesmanship	25
Courtesy, Conduct, D.C. Law	50
Anatomy, Physiology, Bacteriology	
Pathology, Chemistry, Electricity	150
<u>Sanitation</u>	<u>50</u>
Total hours	1,500

or

(b) Training and experience equivalent in the judgement of the Board to fifteen hundred (1,500) hours.

3703.3 The equivalency requirement of §3703.2(b) shall be met by furnishing proof satisfactory to the Board that the applicant is licensed in another jurisdiction within the United States of America and has fifteen hundred (1,500) hours in combined experience and training.

3703.4 A cosmetologist may not hold himself or herself out to the public as a specialist in any cosmetology specialty unless the cosmetologist has passed the examination for that specialty. A cosmetologist may take the examination(s) for any specialty cosmetology license at any time after passing the cosmetology operator examination(s).

3703.5 Applicants for a license by examination as a barber shall furnish proof satisfactory to the Board that the applicant has acquired:

(a) Fifteen hundred (1,500) hours of training in a licensed school or school otherwise acceptable to the Board, which shall include the following courses of study and hours:

<u>SUBJECT</u>	<u>HOURS</u>
Shaving/Beard Trimming	100
Styling	100
Shampooing	40
Permanent Wave	150
Wet Curls	100
Facials/Massage	50
Scalp Treatments	25
Dye and Bleach	100
Haircutting	210
Chemical Straightening	225
Personal Hygiene	50
Ethics, Salesmanship	25
Courtesy, Conduct D.C. Law	50
Anatomy, Physiology, Bacteriology, Pathology, Chemistry, Electricity	150
Sanitation	50
Hairpieces	25
<u>Shop Management</u>	<u>50</u>
Total hours	1,500

or

(b) Training and experience equivalent in the judgement of the Board to fifteen hundred (1,500) hours of training.

3703.6 The equivalency requirements of §3703.5(b) shall be met by furnishing proof satisfactory to the Board that the applicant is licensed in another jurisdiction within the United States of America and has fifteen hundred (1,500) hours in combined experience and training.

3703.7 If a licensed barber wishes to become a licensed cosmetologist, he or she shall have successfully completed the fifteen hundred (1,500) hour barber training course or shall possess a current District of Columbia barber license. Upon application to the Board, he or she shall be given up to one thousand (1000) hours of credit for subjects previously covered in the barber training course. Those subjects include, but are not limited to: shampooing; personal hygiene; ethics and salesmanship; courtesy, conduct, and D.C. law; anatomy, physiology, bacteriology, pathology, chemistry, and electricity; scalp treatments, and sanitation. Before being permitted to take the cosmetology practical and theory exam, he or she shall have successfully completed 50 hours of Manicuring, 100 hours of Pressing, 35 hours of Braiding, 40 hours of Sanitation, 100 hours of Croquinole Wave/Styling, 100 hours of Haircutting, 75 hours

of electrology, and passed both the theory and practical portions of the Board's barber examination.

3703.8 If a licensed cosmetologist wishes to become a licensed barber, he or she shall have successfully completed the fifteen hundred (1,500) hour cosmetology training course or shall possess a current District of Columbia cosmetology license. Upon application to the Board, he or she shall be given up to one thousand (1000) hours of credit for subjects previously covered in the cosmetology training course. Those subjects include, but are not limited to: shampooing; personal hygiene; ethics and salesmanship; courtesy, conduct, and D.C. law; anatomy, physiology, bacteriology, pathology, chemistry, and electricity; scalp treatments, and sanitation. Before being permitted to take the barber practical and theory exam, he or she shall have successfully completed 100 hours of Shaving/Beard trimming, 100 hours of Styling, 210 hours of Haircutting, 50 hours of Shop Management, and 40 hours of Sanitation, and passed both the theory and practical portions of the Board's cosmetology examination.

3703.9 Applicants for a specialty license by examination as a braider shall furnish proof satisfactory to the Board that the Applicant has successfully completed.

(a) One hundred (100) hours of training in a licensed school or school otherwise acceptable to the Board which shall include the following courses of study and hours:

<u>SUBJECT</u>	<u>HOURS</u>
Bacteriology & Sanitation	12
Safety, Health, & D.C. Law	8
Basic Anatomy & Physiology	5
Shampoos, Rinses, & Procedure	8
Chemistry of Natural Hair Coloring Processing	6
Structure of Hair	6
Scalp Disorders & Diseases	8
Hair & Scalp Care (applications & procedures)	15
Basic Braid, Cornrow	16
<u>Basic Braid, Cornrow with extension</u>	<u>16</u>
Total Subject Hours	100

or

(b) Training and experience equivalent in the judgement of the Board to one hundred (100) hours of training.

3703.10 The equivalency requirement of §3703.9(b) may be met by furnishing proof satisfactory to the Board that the applicant is licensed in another jurisdiction and has one hundred (100) hours combined experience and training.

3703.11 The Board may waive the braider examination requirement for applicants who meet the waiver requirements of §3708 of this chapter.

3703.12 Applicants for a specialty license by examination as a manicurist shall furnish proof satisfactory to the Board that the Applicant has acquired:

(a) Three hundred and fifty (350) hours of training in a licensed school or school otherwise acceptable to the Board, which shall include the following courses of study and hours:

<u>SUBJECT</u>	<u>HOURS</u>
Manicuring (water and oil)	100
Pedicure	25
Personal Hygiene	25
Ethics, Salesmanship	25
Courtesy, Conduct,	
Communication Skills, D.C. Law	35
Anatomy, Physiology	25
Bacteriology, Pathology	30
Chemistry	35
Electricity	20
Sanitation	30
Total hours	350

or

(b) Training and experience equivalent in the judgement of the Board to three hundred and fifty (350) hours.

3703.13 The equivalency requirement of §3703.12(b) shall be met by furnishing proof satisfactory to the Board that the applicant is licensed in a jurisdiction within the United States of America and has three hundred and fifty (350) hours in combined experience and training.

3703.14 Applicants for a specialty license by examination as an electrologist shall furnish proof satisfactory to the Board that the applicant has completed high-school or passed the GED and acquired:

(a) Six hundred (600) hours of training in a licensed school or school otherwise acceptable to the Board, which shall include the following courses of study and hours:

<u>SUBJECT</u>	<u>HOURS</u>
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Anatomy & Physiology of Skin & Hair	100
Infection Control	50
Clinical Observation & Application	300
Modalities	50
Equipment Operation and Safety	30
<u>Professional, Ethical, & Legal Responsibilities</u>	<u>70</u>
Total hours	600

or

(b) Training and experience equivalent in the judgment of the Board to six hundred (600) hours.

3703.15 The equivalency requirement of §3703.14(b) shall be met by furnishing proof satisfactory to the Board that the applicant is licensed in another jurisdiction within the United States of America and has six hundred (600) hours in combined experience and training.

3703.16 The Board may waive the electrologist examination requirement for applicants who meet the waiver requirements of §3708 of this chapter.

3703.17 Applicants for a specialty license by examination as an esthetician shall furnish proof, satisfactory to the Board, that the applicant has acquired:

(a) Six hundred (600) hours of training in a licensed school or school otherwise acceptable to the Board, which shall include the following courses of study and hours:

<u>SUBJECT</u>	<u>HOURS</u>
Preparation for Aesthetics Profession	70 Theory, 25 Clinic
Facial & Peel Procedures	55 Theory, 110 Clinic
Color Theory & Makeup (non-permanent)	35 Theory, 53 Clinic
Methods of Hair Removal (non-permanent)	10 Theory, 55 Clinic
Enemies of the Skin/Advanced Topics	18 Theory, 35 Clinic
Male Skin Care & Grooming	5 Theory, 15 Clinic
Machines In Skin Care	30 Theory, 15 Clinic
Business Practices/Job Skills	36 Theory, 25 Clinic
<u>State Laws & Regulations</u>	<u>8 Theory</u>

Total Hours 600

or

(b) Training and experience equivalent in the judgement of the Board to six hundred (600) hours.

3703.18 The equivalency requirement of §3703.17(b) shall be met by furnishing proof satisfactory to the Board that the applicant is licensed in another jurisdiction within the United States of America and has six hundred (600) hours in combined experience and training.

3703.19 Applicants for a license by examination as a manager of a cosmetology salon shall furnish proof satisfactory to the Board that the applicant has:

- (a) At least two (2) years of licensed experience as a cosmetology operator in a beauty salon; or
- (b) Served as a licensed operator in a registered cosmetology salon for six (6) months or more, completed five hundred (500) hours of training in a manager's course in a licensed school, and completed all of the hours of study necessary to become a cosmetologist. The manager's course shall include:

<u>COURSE</u>	<u>HOURS</u>
Shop Management	300
Ethics, Salesmanship	50
<u>Courtesy, Conduct, D.C. Law</u>	<u>150</u>
Total	500

3703.20 Applicants for a license by examination as a barbershop manager shall furnish proof satisfactory to the Board that the applicant has:

- (a) At least two (2) years experience as a licensed barber in a barbershop; or
- (b) Served as a licensed barber in a registered barbershop for six (6) months or more, completed five hundred (500) hours of training in a manager's course in a licensed school, and completed all of the hours of study necessary to become a licensed barber. The manager's course shall include:

<u>COURSE</u>	<u>HOURS</u>
Shop Management	300
Ethics, Salesmanship	50
<u>Courtesy, Conduct, D.C. Law</u>	<u>150</u>
Total hours	500

3703.21 Applicants for a license by examination as a manager of a specialty cosmetology salon shall furnish proof satisfactory to the Board that the applicant has:

- (a) At least two (2) years experience as a licensed operator within the applicant's limited specialty in a licensed cosmetology or specialty salon; or

- (b) Served as a licensed operator within the applicant's specialty in a licensed cosmetology or specialty salon for six (6) months or more, completed five hundred (500) hours of training in a manager's course in a licensed school, and completed all of the hours of study necessary to become a specialty cosmetologist. The manager's course shall include:

<u>COURSE</u>	<u>HOURS</u>
Shop Management	300
Ethics, Salesmanship	50
<u>Courtesy, Conduct, D.C. Law</u>	<u>150</u>
Total hours	500

- 3703.22 Applicants for a license by examination as an instructor shall furnish proof satisfactory to the Board that the applicant qualifies for the examination under either (a) or (b) of this section:

- (a) Served as a licensed barber, cosmetology operator, or specialty cosmetologist in a licensed salon or barbershop for at least six (6) months, has completed one thousand (1000) hours of training in an instructor's course in a licensed school, and has completed all of the hours of study necessary to become a barber, cosmetology operator, or specialty cosmetologist. The barber or cosmetology instructor course shall include:

<u>SUBJECT</u>	<u>HOURS</u>
Barber or Cosmetology	
Practical Procedures and Theory	155
Specialty Cosmetology Practical Procedures and Theory	100
Basic Teaching Methods, Principles of	
Preparing Lessons Plans	70
Shop Management	50
Ethics and Salesmanship	30
Oral, Written and Performance Testing	140
Safety Measures	30
D.C. Law and Regulations	10
Supervision and Training of students in a laboratory	
Setting	50
Practice Teaching	300
<u>Using Computers in Cosmetology and Barbering</u>	<u>65</u>
Total hours	1000

- (b) Holds a current barber, cosmetology operator, specialty cosmetologist, or barber manager, cosmetology manager, or specialty cosmetology manager's license and

has completed a course of study in teaching techniques at the post secondary educational level.

3704 BARBER AND COSMETOLOGY APPRENTICESHIPS

3704.1 Experience gained through a barber and cosmetology apprenticeship completed in barbershops or cosmetology salons shall satisfy the training and experience requirement for purposes of §3703.1 if:

- (a) The apprentice completes classroom training as shown in §3704.5 and completes a minimum of two thousand (2000) hours of apprenticeship work experience;
- (b) The apprenticeship work experience component is at least twenty (20) hours per week and work experience is not less than one (1) year but lasts no longer than two (2) years from the date of registration;
- (c) Working as a “shampooer”, by whatever name known, shall not be credited towards the work experience component of the apprenticeship;
- (d) The apprenticeship classroom training curriculum has been approved by the Board;
- (e) The apprentice is at least eighteen (18) years of age;
- (f) The apprenticeship program complies with the requirements of The Office of Apprenticeship Information and Training as set forth in 7 DCMR Chapter 11 (Apprenticeship); and
- (g) Any information provided to the Office of Apprenticeship Information and Training by the apprentice and instructor must be provided to the Board of Barber and Cosmetology.

3704.2 A barber or cosmetology apprenticeship may fulfill only the training and experience requirement of these regulations. Upon completion of the apprenticeship, the apprentice shall sit for examination within six months or lose credit for all training and experience gained in the apprenticeship.

3704.3 An individual shall be registered by the Board before the individual may serve as an apprentice in a beauty salon or barbershop in the District.

3704.4 While registration as an apprentice is in effect, the registration authorizes the individual to learn to practice barbering or cosmetology:

- (a) In a cosmetology salon that holds a salon owner’s license or a barbershop that holds a barbershop owner’s license; and

- (b) Under the supervision of;
- (c) If learning the practice of cosmetology, a licensed cosmetology instructor;
- (d) If learning the practice of barbering, a licensed barber instructor;
- (e) A licensed instructor may train one apprentice at a time, but the minimum numerical ratio required shall be one (1) apprentice to every three (3) operators employed.
- (f) Instructors that rent space pursuant to §3720 are not permitted to have apprentices and do not count towards instructor requirements of this section.

3704.5 All classroom theory training must be completed before beginning the work experience part of the apprenticeship. The classroom training must occur in a Board approved school or continuing education course and shall consist of the following:

(a) 500 classroom theory hours for Barbers consisting of the following:

(1) Shampooing	15
(2) Scalp Treatments	10
(3) Chemical Straightening	150
(4) Personal Hygiene	50
(5) Ethics, Salesmanship	25
(6) Courtesy, Conduct, D.C. Law	50
(7) Anatomy, Physiology, Bacteriology, Pathology, Chemistry, Electricity	150
(8) Sanitation	50

(b) 500 classroom theory hours for Cosmetologists consisting of the following:

(1) Shampooing	15
(2) Scalp Treatments	10
(3) Chemical Straightening	150
(4) Personal Hygiene	50
(5) Ethics, Salesmanship	25
(6) Courtesy, Conduct, D.C. Law	50
(7) Anatomy, Physiology, Bacteriology, Pathology, Chemistry, Electricity	150
(8) Sanitation	50

3704.6 Each registered apprentice shall display the certificate of registration conspicuously in the apprentice's place of employment or training and shall wear identification clearly showing that the individual is an apprentice.

3704.7 Registration as an apprentice is limited to a term of two years from the date of registration and is not renewable. If the apprentice has not fulfilled the requirements

necessary to sit for the barber or cosmetology examination the apprentice may lose credit for the hours obtained.

- 3704.8 The Board, for good cause shown, may grant an apprentice an extension of time to complete the requirements of the apprenticeship. Good cause shall include medical emergencies, family emergencies, and military service.
- 3704.9 A request for an extension of time must be made in writing and filed with the Board no later than thirty (30) days before the expiration of the apprenticeship. The Board shall notify the apprentice within sixty (60) days of receiving the request for extension whether it approved or denied the request.
- 3704.10 Any extension of time granted by the Board shall expire no later than one hundred eighty (180) days from the date that the Board approves the extension.
- 3704.11 The decision to approve or deny a request for extension of time shall be made on a case-by-case basis and may be made by a simple majority of the Board members present at the meeting where the request is considered. The Board's decision regarding a request for extension is final.
- 3704.12 The apprentice registration shall only be valid for training and experience in barbering or cosmetology and is not valid for training and experience in any of the specialty cosmetology licenses.

3705 DEMONSTRATORS

- 3705.1 Any person who seeks a license to conduct sales demonstrations of barber or cosmetology products and equipment shall furnish proof satisfactory to the Board that the applicant:

(a) Is at least eighteen (18) years of age and either;

(1) An agent or employee of a manufacturer or retailer of cosmetics or barber and cosmetology products and equipment employed to conduct sales demonstrations and is certified by the manufacturer or retailer; or

(2) Is a licensed barber, cosmetologist or specialty cosmetologist.

- 3705.2 No person shall charge a fee to the public for the services rendered or the materials used in connection with a demonstration.

3706 TERM OF LICENSES

- 3706.1 Subject to the requirements of §3306.2 of this title, a license to practice barbering, issued pursuant to this chapter, shall expire at 12:00 midnight on April 15th of each odd-numbered year.

- 3706.2 Subject to §3306.2 of this title, a license to practice cosmetology or a cosmetology specialty, issued pursuant to this chapter, shall expire at 12:00 midnight on April 15th of each even-numbered year.
- 3706.3 Subject to §3306.2 of this title, a license to manage a barbershop, or to instruct in barbering, issued pursuant to this chapter, shall expire at 12:00 midnight on April 15th of each odd-numbered year.
- 3706.4 Subject to §3306.2 of this title, a license to manage a cosmetology or specialty salon, or to instruct in cosmetology or specialty cosmetology, issued pursuant to this chapter, shall expire at 12:00 midnight on April 15th of each even-numbered year.
- 3706.5 Subject to §3306.2 of this title a license to operate a cosmetology or specialty cosmetology salon, issued pursuant to this chapter, shall expire at 12:00 midnight on April 15th of each even-numbered year.
- 3706.6 Subject to §3306.2 of this title, a license to operate a barbershop, issued pursuant to this chapter, shall expire at 12:00 midnight on April 15th of each odd-numbered year.
- 3706.7 Subject to §3306.2 of the title, a certificate of registration to act as a demonstrator, issued pursuant to this chapter shall expire at 12:00 midnight on April 15th of each even-numbered year.

3707 EXAMINATION

- 3707.1 Except as otherwise provided in this chapter, an applicant shall pass an examination approved by the Board.
- 3707.2 Upon appearance for the examination, and before being allowed to sit for any examination required for licensure under this chapter, applicants must present a valid proof of identity.
- 3707.3 Valid proof of identity shall be defined as; a non-expired District, State or Federal government issued photo-identification card, such as a driver's license, passport (issued within the past ten years), or non-driver's photo identification card.
- 3707.4 The Board or its appointee shall compare the photo present on the photo identification card to that which was provided by the applicant along with the applicant's application.
- 3707.5 Applicants that are not United States citizens are required to present a non-expired visa, passport from the country of citizenship, or United States of America Federal Government issued green card or other permanent residency document. Any document presented by the applicant originating from a foreign government must have been issued within the past eight years. Unless the Board allows otherwise, any

document presented by a foreign applicant for the purposes of this section must include a photograph embedded within the document.

- 3707.6 International Driver's Licenses, employment identification cards (including those issued by government agencies), or other types of photo identification not specifically allowed by the Board are not considered valid proof of identity.
- 3707.7 The Board shall have the authority to deny entry into the examination to any applicant if there is a reasonable suspicion that the identification is invalid or that the person represented in the application photo and photo identification card referred to in §3707.3 are not the same. Failure to provide a valid proof of identity shall be grounds for disqualification from the examination.
- 3707.8 If the Board, at any time, determines that an applicant engaged the services of another person to take any part of an examination required under this chapter, the applicant shall be considered unfit to practice and shall not receive a license or, if the license has already been issued, shall have the license summarily suspended immediately. The Board shall proceed with further action consistent with the enforcement provisions of this chapter.
- 3707.9 Applicants or licensees found to have violated the provisions of this subsection are barred from reapplying for a license under this chapter for one year from the date of the Board's revocation or denial unless otherwise provided in the order. A permanent record shall be kept of the Board's decision and copies of the disciplinary action may be forwarded to all licensing authorities that offer reciprocity or endorsement to those professionals licensed in the District under this chapter. The Board shall conduct its hearing under this subsection independently from any criminal prosecution that may occur and the result of this hearing shall not be dependent upon the result of any criminal prosecution.
- 3707.10 It shall be the policy of this Board to refer all potential identity fraud incidents described in this section to the Metropolitan Police Department and Federal authorities for criminal investigation and prosecution.
- 3707.11 All student applicants shall take the exam within two years of graduation from, or completion of, an approved program at an approved school. Apprentices shall take the exam within six months of completing the apprenticeship program.
- 3707.12 All applicants whose first language is not English shall submit evidence satisfactory to the Board of the applicant's competency in the English language.
- 3707.13 Examinations shall be held in the District at least four (4) times per year.
- 3707.14 The examination may consist of a written, practical, oral, or computerized examination, as the Board considers appropriate.

3707.15 A passing score on the written and practical examination is required.

(a) To qualify for licensure, an applicant shall obtain a passing score of:

(1) Seventy percent (70%) for a cosmetology operator, specialty cosmetology operator, or barber; and

(2) Seventy-five percent (75%) for all manager or instructor licenses.

3707.16 An applicant, who fails any part of the practical exam, in order to be eligible for a license, shall be re-examined in the part(s) failed within one year after notice of the failed examination results. The applicant shall, for each of the next five (5) consecutive regular examinations offered by the Board, retain credit for those parts of the examination passed and for any additional subject or subjects passed at the five (5) consecutive regular examinations.

3707.17 If an applicant who has passed part of the practical examination does not apply to the Board for re-examination and is not re-examined in the part(s) failed at each of the five (5) consecutive regular examinations offered by the Board, the applicant shall forfeit all credits for those part(s) that the applicant passed and shall subsequently be re-examined as though the applicant were an applicant applying for the first time.

3707.18 An applicant who receives a failing grade on an examination, or on one or more parts of a multi-part examination, or fails to appear for a scheduled examination shall file a new application and pay a new fee. Examination fees are nonrefundable.

3707.19 The Director shall not reinstate the license, certification, or registration of a person who fails to apply for reinstatement within five (5) years after the license, certification, or registration expires. Such person may become licensed, certified, or registered only by meeting the requirements for obtaining an initial license, certification, or registration under this chapter.

3708 WAIVER OF EXAMINATION – SPECIALTY COSMETOLOGY OPERATOR

3708.1 The Board may waive the examination requirements of §3707 for an applicant who meets the training, experience, and qualifications requirements to practice braiding or electrology and who proves to the satisfaction of the Board that the applicant was practicing braiding or electrology on a substantially full-time basis within the District of Columbia for three (3) years during the five (5) years immediately preceding the effective date of this chapter.

3708.2 The application for waiver of examination shall be filed within two years of the effective date of this chapter.

3708.3 An applicant shall demonstrate to the Board that the applicant has been practicing braiding or electrology on a substantially full-time basis by submitting evidence satisfactory to the Board that include the following:

- (a) Affidavits from the applicant and three (3) licensed cosmetologists attesting to the nature of applicant's practice during the applicable time period;
- (b) An affidavit from a certified public accountant or bookkeeper of the applicant's income tax or business record covering the applicable time period; and
- (c) Any other information the Board considers relevant.

3709 WAIVER OF EXAMINATION – BARBER INSTRUCTOR

3709.1 The Board may waive the examination requirements of §3707 for an applicant for a barber instructor's license that meets the applicable training, experience, and qualifications requirements to practice barbering and who provides to the satisfaction of the Board that the applicant has:

- (a) At least three (3) years of experience as a barber manager in a licensed shop; or
- (b) At least two (2) years of experience either as a master barber instructor in a school acceptable to the Board; or
- (c) At least three (3) years of experience as a master barber during which time at least two (2) persons successfully completed a barber apprenticeship under the direct supervision of the applicant during the five (5) years that immediately precede the effective date of this chapter.

3709.2 In addition to the requirements set forth in §3709.1 the Board may consider any other information that it considers relevant.

3709.3 The application for waiver of examination shall be filed within two years of the effective date of this chapter.

3710 WAIVER OF EXAMINATION: SPECIALTY COSMETOLOGY MANAGER

3710.1 The Board may waive the examination requirement for an applicant for a license as a specialty cosmetology manager who meets the training, qualifications, and experience requirements to practice braiding, manicuring, electrology, or esthetics and who proves to the satisfaction of the Board that the applicant has had experience managing a salon that offers braiding, manicuring, electrology, or esthetics on a substantially full-time basis in the District of Columbia for the four (4) years immediately preceding the effective date of this chapter.

- 3710.2 The application for waiver for special examination will be waived within two (2) years of the effective date of this chapter.
- 3710.3 An applicant shall demonstrate to the Board that the applicant has been managing a salon that offers braiding, manicuring, electrology, or esthetics, on a substantially full-time basis by submitting evidence satisfactory to the Board that includes the following:
- (a) Affidavits from the applicant and three (3) licensed cosmetologists attesting to the nature of the applicant's practice during the applicable time period;
 - (b) An affidavit from a certified public accountant or bookkeeper of the applicant's income tax or business records covering the applicable time period; and
 - (c) Any other information the Board considers relevant.

3711 LICENSURE BY RECIPROCITY OR ENDORSEMENT

- 3711.1 The Board may grant a waiver of the examination to applicants who have obtained licenses in another state only if the state in which the applicant is licensed waives the examination requirement for District of Columbia licensees to a similar extent. An applicant for a license by reciprocity or endorsement shall furnish proof satisfactory to the Board that the applicant has paid the applicable fee and:
- (a) If applying for licensure by reciprocity the applicant must provide a letter of good standing from a jurisdiction with requirements which in the opinion of the Board, were substantially equivalent at the time of the applicant's licensure to the requirements of the Board's rules, and which state admits barbers and cosmetologists licensed by the District in a like manner; or
 - (b) If applying for licensure by endorsement the applicant must provide the Board with written certification from an authorized officer of a recognized entity of the applicant's successful completion of an examination recognized by the board and taken in a state with standards substantially equivalent to those of the District of Columbia.
- 3711.2 The Board may deny an application for a license by reciprocity or endorsement to a person against whom disciplinary action has been taken, or who has been convicted of a crime bearing on the applicant's fitness to practice.
- 3711.3 The Board may interview an applicant under this section to determine whether the applicant's education, training, or character meets the requirements of the Act and this chapter.

- 3711.4 In addition to the requirements of §3711.1, an applicant for a license by reciprocity or endorsement shall prove to the satisfaction of the Board that the applicant was actively engaged in the profession in the other jurisdiction.

3712 APPLICANTS EDUCATED IN FOREIGN COUNTRIES

- 3712.1 The Board may grant a license to practice barbering, cosmetology, or specialty cosmetology to an applicant who completed an educational program in a foreign country if the applicant meets the following requirements:

- (a) Submits proof to the Board of an official transcript or notarized copy of the degree, diploma, or certificate indicating that the applicant has completed a barbering or cosmetology program in a country other than the United States and its territories or comparable experience and training in other specialties;
- (b) Submits evidence satisfactory to the Board of the applicant's competency in the English language; and
- (c) Satisfactorily completes the District of Columbia barbering, cosmetology and special cosmetology examination administered by the Board or its designee, in accordance with §3707 of this title.

- 3712.2 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board, at the applicant's own expense, and shall submit a translation on the translator's official stationery that is also signed and dated by the translator attesting to its accuracy.

- 3712.3 The Board may interview an applicant under this section to determine whether the applicant's education, training, or character meets the requirements of the Act and this chapter.

3713 DISPLAY OF LICENSE

- 3713.1 A licensee of a barber, cosmetology, or specialty cosmetology salon shall display the salon licenses unobstructed from the view of patrons.

- 3713.2 All individual licensees shall wear their license on the front of their uniform or other acceptable work clothes in plain view of patrons. Individual licenses shall be placed where necessary at each station and in plain view of patrons.

- 3713.3 Each person licensed, certified, or registered under this subchapter shall notify the Mayor of any change of address of the place of residence or place of business or employment within 30 days after the change of address.

3714 PRELICENSURE SUPERVISED PRACTICE

- 3714.1 The following persons shall be authorized to engage in the prelicensure supervised practice of barbering, cosmetology, or specialty cosmetology:
- (a) A student fulfilling the educational requirements of the Act in a licensed school; or
 - (b) An applicant for a license who has an initial application before the Board and who has demonstrated to the Board that the applicant meets all of the qualifications for licensure except sitting for the examination.
- 3714.2 A student may engage in prelicensure practice only after completion of one-third (1/3) of the required course hours in a licensed school.
- 3714.3 A student who practices pursuant to this section shall practice only in a licensed school under a licensed instructor.
- 3714.4 An applicant may engage in prelicensure practice only upon submitting a complete and accurate application and receiving a letter permitting supervised practice from the Board. An applicant under §3714.1(b) who fails the examination for licensure shall not be permitted to continue practicing under this section and shall be required to meet the examination requirements set forth in §3707 for reexamination.
- 3714.5 An applicant shall take the first licensing examination offered by the Board following submission of the application for licensure.
- 3714.6 The Board may waive §3714.5 if the applicant's reason for failing to sit for the first examination constitutes good cause.
- 3714.7 A student or applicant shall be subject to all of the applicable provisions of the Act and this chapter. The Board may deny an application for a license by, or take other disciplinary action against, a student or applicant who is found to have violated the Act or this chapter.
- 3714.8 An applicant shall take the next examination following a waiver of the provision for examination in §3714.6.
- 3714.9 A person who has been denied a license or disciplined by the Board, or who has such an action pending in the District of Columbia or in another jurisdiction, shall not practice pursuant to this section unless authorized by the Board in writing.
- 3714.10 An applicant who practices pursuant to this section shall practice only in a licensed school, salon or shop.

- 3714.11 A student or applicant shall practice only under the immediate supervision of a licensed barber manager or instructor, cosmetology manager or instructor, or specialty cosmetology manager or instructor.
- 3714.12 A student or applicant shall not receive compensation of any kind from a customer, either directly or indirectly, except for a salary based on hours worked under supervision.
- 3714.13 While serving the public, the student or applicant shall wear a nametag acceptable to the Board indicating their status as a student or applicant.
- 3714.14 A student or applicant shall not assume management or supervisory responsibility for the operation of a school, salon, or shop.
- 3714.15 The supervisor shall be fully responsible for all practice by a student or applicant during the period of supervision and is subject to disciplinary action for any violation of the Act or this chapter by the student or applicant.

3715 [Reserved]

3716 BARBERSHOPS AND COSMETOLOGY SALONS

- 3716.1 No person shall operate a salon or shop anywhere in the District without first having obtained the appropriate Business licenses, registrations, and/or certificates.
- 3716.2 No Public Health: Public Accommodations endorsement to operate a salon or shop in the District shall be issued until the Director of the Department of Consumer and Regulatory Affairs has done the following:
- (a) Determined that the applicant has complied with all applicable laws and regulations enforced by the Department;
 - (b) Verified that the proper barber, cosmetology, or specialty cosmetology professional license required by this chapter has been issued; and
 - (c) Determined that the applicant has paid the applicable fees as established by the Director and has been issued the appropriate Certificate of Occupancy.
- 3716.3 Each salon or shop owner shall apply for and obtain from the Board a salon or shop license that shall be issued without examination.
- 3716.4 Any owner who intends to manage a salon or shop shall obtain both a salon license and a manager's license.
- 3716.5 A license shall be obtained for each place of business and the appropriate fee shall be paid for each license.

- 3716.6 Each salon or shop owner shall frame the salon or shop license under clear glass or plastic and shall post the license in the salon or shop in plain view of the public.
- 3716.7 Each salon or shop shall have one licensed manager on duty at all times during operating hours. In emergencies, where a manager cannot be present, the owner may designate a licensed operator as a temporary manager for up to 48 hours. The owner must notify the Board in writing immediately if a licensed operator has been designated as a temporary manager. If the owner cannot have a licensed manager on duty after 48-hours the owner shall petition the Board for an extension. The petition for extension shall be submitted in writing via facsimile and regular mail or personal delivery. Extensions are granted at the Board's discretion and may be revoked by the Board at any time.

3717 FACILITIES AND EQUIPMENT

- 3717.1 Unless the Director of the Department of Consumer and Regulatory Affairs certifies in writing that business other than a salon or shop may be conducted in the space designated as the salon or shop without creating a public health or safety hazard, each salon or shop shall be completely separated by a solid floor-to-ceiling wall or partition, unbroken by any door or window, from any space in which any other business is conducted and from any place designed or intended for human habitation.
- 3717.2 The solid wall or partition shall be constructed in accordance with the requirements of the District of Columbia Construction Code and must bear the appropriate preconstruction permits.
- 3717.3 A salon or shop may have a door or window opening directly on a public corridor, hallway, passageway, lobby, or to the outside of the building.
- 3717.4 Each salon or shop shall have at least one (1) water closet facility (a room with a sink and toilet), which shall be considered adequate if it meets the following requirements:
- (a) The water closet is located within the same building as the salon or shop;
 - (b) The water closet is accessible without going outside the building or through space exclusively controlled by another;
 - (c) The water closet may be reached by a line of travel not exceeding one hundred feet (100');
 - (d) The use of the water closet is not shared by any dwelling unit.
- 3717.5 Water closet walls shall have nonabsorbent surfaces.

- 3717.6 Water closet floors shall comply with the requirements of § 110 of Title 22 of the District of Columbia Municipal Regulations (Public Health and Medicine).
- 3717.7 Adequate facilities for heating the salon or shop shall be provided in accordance with the requirements of § 110 of Title 22 of the District of Columbia Municipal Regulations (Public Health and Medicine).
- 3717.8 All rooms used for the purpose of beauty and barber culture shall be provided with artificial illumination, reasonably uniformly distributed, to give an illumination of an intensity of thirty (30) foot-candles at the working surface of each work stand.

3718 MINIMUM EQUIPMENT

- 3718.1 Each barber, braiding, and cosmetology salon or shop shall have the equipment required in this section.
- 3718.2 There shall be at least one (1) sink with running hot and cold water for general salon or shop purposes, and at least one (1) sink with running hot and cold water for shampoo purposes.
- 3718.3 Except for specialty braiding salons, there shall be an additional shampoo sink with hot and cold running water for each two chairs beyond the first; provided, that each shampoo sink shall not be located more than twenty feet (20') from any chair which it is intended to serve and shall be located within the same room. For specialty braiding salons, there shall be an additional shampoo sink with running hot and cold water for each four (4) chairs beyond the first.
- 3718.4 Any shampoo sink serving a chair or chairs or shampoo booth or booths shall be equipped with shampoo fittings and trim.
- 3718.5 Shampoo sinks, other than those in booths, shall not be spaced closer than four feet (4') center to center.
- 3718.6 In existing salons or shops, the Director shall permit variations from the requirements of §3718.5 by not more than eighteen inches (18").
- 3718.7 All plumbing fittings and fixtures shall be designed and installed or operated to prevent the possibility of any cross-connection or interconnection between waste and potable water.
- 3718.8 All salons or shops shall contain at least one (1) service sink not less than sixteen inches (16") wide, sixteen inches (16") long, and ten inches (10") deep, with hot and cold running water, for custodial purposes only; provided, that where a part of a premises is used for custodial purposes, it shall be sufficient if the plumbing fixtures are provided within the building if the fixtures can be reached by a line of travel not exceeding one hundred feet (100') without going outside the building.

- 3718.9 There shall be closed storage cabinets for supplies, clean linens, and storage space for supplies and other materials used in a practice covered by these regulations.
- 3718.10 In addition to the equipment required in §§3718.2 through 3718.9, each salon or shop shall contain the following:
- (a) Storage space for custodial equipment and supplies;
 - (b) Covered containers lined with disposable plastic bags for the daily removal of all waste materials;
 - (c) Supplies of appropriate disinfectant and fungicide;
 - (d) Clean laundered towels, hair capes, and shampoo capes;
 - (e) Neck strips and suitable dispenser;
 - (f) Hair dryers;
 - (g) Hairdressing stand or dresserette with a shelf and mirror; and
 - (h) Facial or all-purpose chair.
- 3718.11 Each all-purpose cosmetology station or booth shall have the following equipment:
- (a) All-purpose cosmetology chair;
 - (b) Covered container for disinfecting tools;
 - (c) Closed cabinet or covered container for clean tools;
 - (d) Shampoo dispenser;
 - (e) Waving fluid dispenser, if necessary;
 - (f) Container for waste materials; and
 - (g) Portable shampoo boards where necessary.
- 3718.12 Each braider station shall have the following equipment:
- (a) All-purpose cosmetology chair;
 - (b) All-purpose stool;

- (c) Covered container for disinfecting tools;
 - (d) Closed cabinet or covered container for clean tools;
 - (e) Portable shampoo board and shampoo dispenser where necessary; and
 - (f) Closed container for waste materials.
- 3718.13 Each barber chair shall have the following equipment:
- (a) Barber chair with head rest having a changeable cover;
 - (b) One (1) or more covered containers for disinfecting and fungicidal solution;
 - (c) One (1) closed cabinet for tools and clean linen;
 - (d) One (1) closed container for soiled linen;
 - (e) One (1) closed container for used papers;
 - (f) Automatic lathering device or devices; and
 - (g) Clean headrest covers and suitable dispensers.
- 3718.14 Each manicurist station shall have the following equipment:
- (a) Manicuring stand, either stationary or movable, with a lamp;
 - (b) Closed cabinet or covered container for the storage of clean and disinfected manicuring instruments;
 - (c) Covered container of a size that will accommodate the instruments to be disinfected;
 - (d) Closed container for waste materials; and
 - (e) At least two (2) complete sets of manicuring instruments.
- 3718.15 In addition to the equipment required in §§3718.7 through 3718.9., each manicuring salon shall have the following:
- (a) Storage space for custodial equipment and supplies;
 - (b) Covered containers for all waste materials;
 - (c) Adequate supplies of appropriate disinfectant and fungicide;

- (d) Clean laundered towels and additional facial or clasp exaspirator masks upon request for customers;
 - (e) Stationary or mobile manicuring stand with lamp and two chairs;
 - (f) Closed cabinet or covered container for storing clean and disinfected manicuring instruments;
 - (g) Adequately-sized covered container for disinfected instruments;
 - (h) One (1) general purpose sink with running hot and cold water for every twelve (12) manicure stations; and
 - (i) At least one (1) complete set of manicuring instruments per operator.
- 3718.16 In addition to the equipment required in §§3718.2 through 3718.9, each esthetics salon shall have the following:
- (a) Storage space for custodial equipment and supplies;
 - (b) Each treatment room shall have a covered trash container;
 - (c) Supplies of appropriate disinfectant, fungicide, and astringent;
 - (d) Clean laundered towels and customer drapes for each customer;
 - (e) A facial or all-purpose chair or table;
 - (f) A closed cabinet or covered container for the storage of clean and disinfected instruments;
 - (g) A covered container of a size that will accommodate the instruments to be disinfected; and
 - (h) A dispenser pump, spray-type container, squeeze bottle, or spatula from which all fluids, creams, and lotions shall be dispensed.
- 3718.17 In addition to the equipment requirements in §3718.16 of this chapter, a Beauty school, approved by the District of Columbia Educational Licensure Commission or the Board, that offers beauty services normally performed by an esthetician shall comply with the following sanitation requirements;
- (a) Creams, lotions, powders, and other cosmetics shall be removed from the patron using disposable absorbent cotton, cleansing tissue, cotton swab, freshly laundered towels, pledget, or other similar material;

- (b) Lip and eyebrow pencils shall be sharpened then wiped with alcohol after each use;
- (c) Lip color, eye color, shadows, or other cosmetics shall be removed from the original container with a clean spatula and applied to the patron with a clean disposable or sanitized applicator or removed from container with a disposable applicator;
- (d) Disposable lip, makeup, eyelash, or other cosmetic application shall be discarded immediately after use;
- (e) Hair removal waxes may not be used for more than one client. Any excess wax left after client service shall be discarded immediately;
- (f) Disposable blood lancets shall be discarded immediately after use and placed into a sharps container;
- (g) Bleach solution or seventy percent (70%) alcohol shall be kept on the esthetician tray for contact disinfecting of non-disposable implements that may come into contact with blood and non-disposable implements shall be sterilized with dry heat, autoclave, or chemically;
- (h) Nondisposable drapings shall be laundered after each client;
- (i) All fluids, creams and lotions shall be dispensed with a dispenser pump, spray-type container, squeeze bottle, or spatula;
- (j) Estheticians should use disposable gloves for extractions of inflammatory lesions.

3718.18 In addition to the equipment requirements in §§3718.14 and 3718.15 of this chapter, a beauty school approved by the District of Columbia Educational Licensure Commission or the Board that offers beauty services normally performed by a manicurist shall comply with the following sanitation requirements:

- (a) Finger bowls and foot bath basins shall be cleansed in soap and water and properly disinfected between patrons;
- (b) Oils used in the manicuring process shall be poured into a disinfected container or pumped into a disinfected hand. Any remaining excess oil shall be immediately discarded;
- (c) Methyl Methacrylate (MMA);
 - (1) A person may not use or possess methyl methacrylate liquid monomer (MMA) in a salon of any type in the District of Columbia.

- (2) To determine whether a person is in violation of subsection (c)(1) of this section, an inspector may chemically test products or take samples of products at random or when the inspector suspects that a product is illegal.
- (3) A person who violates this section may be subject to fines and/or other discipline pursuant to this chapter.
- (d) The manicure table top shall be maintained in a sanitary condition at all times;
- (e) A clean towel or disposable paper cover shall be placed over the manicure cushion and footrest and changed between clients;
- (f) Each emery board shall be discarded after use unless it can be cleansed and disinfected;
- (g) All nondisposable implements shall be cleansed and then disinfected before re-use;
- (h) Instruments used on an individual client shall be placed in a jar sanitizer containing cotton saturated with seventy percent (70%) alcohol or bleach during the manicure process to keep the instruments in a sanitary condition during the entire manicure procedure;
- (i) The complete set of manicuring instruments shall be properly cleansed and disinfected after use on each patron and stored in a dry sanitizer;
- (j) The following procedures shall be followed when paraffin wax is used:
 - (1) A paraffin wax treatment shall be performed before, and not after, a manicure or pedicure;
 - (2) The patron shall be free of broken skin or any skin disorder before the treatment;
 - (3) The patron's hands or feet shall be disinfected before being dipped into a paraffin wax; and
 - (4) The paraffin wax shall be kept sanitary and free of any debris.

3719 ELECTROLOGY

3719.1 In addition to the equipment required in §§3718.7 through 3718.9, each Electrology salon shall contain an office that provides the following:

- (a) Separate treatment and waiting rooms;

- (b) Each treatment room shall be a least forty eight (48) square feet;
 - (c) One sink with hot and cold running water in each treatment room;
 - (d) Adequate lighting;
 - (e) Adequate ventilation;
 - (f) Sanitary condition;
 - (g) Toilet facilities; and
 - (h) An office completely separate and distinct from any dwelling unit.
- 3719.2 A home office must comply with all local zoning laws. A copy of an approved home occupancy permit shall be submitted to the Board thirty (30) days before opening.
- 3719.3 A valid license or Board-certified duplicate license shall be displayed at all times.
- 3719.4 Electrologists shall notify the Board of their business address by certified mail thirty (30) days before opening an office or branch office.
- 3719.5 Electrologists shall notify the Board in writing of any change of business address within thirty (30) days.
- 3719.6 Board members or their agents or designees may inspect any licensee's shop or salon upon reasonable notice.
- 3719.7 Electrologists shall use only Board-approved modalities which are:
- (a) Electrolysis (Galvanic);
 - (b) Thermolysis; and
 - (c) The Blend.
- 3719.8 Electronic tweezer or non-needle methods are prohibited within the practice of electrology.
- 3719.9 Epilators shall be approved by the Federal Communications Commission (FCC) and conform to Federal Food and Drug Administration (FDA) standards.
- 3719.10 Epilators shall be maintained in proper working condition.

- 3719.11 Optimum timing and intensity during treatment shall be used to affect proper epilation of hair and to avoid tweezing.
- 3719.12 A professional lamp and magnification shall be used to view the treatment area.
- 3719.13 A professional treatment table or chair shall be used to administer treatments.
- 3719.14 A clean head towel or drape sheet shall be used for each patron.
- 3719.15 Sanitary disposable paper drapes or washable tabletops or chairs that must be sanitized shall be used on the treatment table or chair for each patron. Paper drapes shall be stored in a closed cabinet. Soiled disposable items shall be discarded into a container lined with a securely fastened plastic bag and removed daily.
- 3719.16 Each treatment room shall have a covered trash container.
- 3719.17 Smoking is prohibited in the treatment room.
- 3719.18 A clean lab coat or uniform is acceptable professional attire.
- 3719.19 The electrologist shall explain the following to the patient before treatment:
- (a) Treatment procedure;
 - (b) Modality used;
 - (c) Hair growth cycles;
 - (d) Regrowth;
 - (e) Importance of keeping follow-up treatment schedule;
 - (f) Possible tissue reactions following treatment;
 - (g) Importance of after-treatment care;
 - (h) Treatment fee; and
 - (i) Signed informed consent to treat.
- 3719.20 The service provider is required to maintain an individual case history card for each patron. A complete past and current health history shall be obtained from each patron before treatment.
- (a) In addition to any privacy protections already established under Federal law or District of Columbia law, any medical information collected by the service

provider shall not be disclosed to a third party unless the patron has provided a signed written consent to such disclosure, which shall be obtained on a case by case basis, except that disclosure of medical information may be made to medical professionals in case of a medical emergency that arises during treatment or such information is required to be disclosed by law.

- (b) Medical information shall be returned to the patron upon request and the service provider shall not retain copies of the records.
- (c) The service provider shall shred all copies of patron medical information if a patron does return for treatment within one year from the date of the last treatment.
- (d) The patron's medical record shall be updated and evaluated on a current basis, and shall include the following:
 - (1) Name, address, telephone number, and date of birth;
 - (2) Medical history and current update or a letter from the patron's physician clearing the patron for Electrology treatment;
 - (3) Prior methods of controlling or removing hair;
 - (4) Condition of tissue before initial treatment and any subsequent change;
 - (5) Pattern and structure of hair growth initially presented and significant subsequent changes;
 - (6) Date of each treatment;
 - (7) Area of treatment;
 - (8) Duration of treatment;
 - (9) Fee charged; and
 - (10) Signed informed consent to treat.
- (e) Social Security Numbers shall not be kept as part of any patron's medical record.
- (f) Violation of the privacy protections in this subsection shall be subject to the enforcement provisions of this chapter and any other applicable law or regulation. Private rights of action available at common law or otherwise provided for by statute are not barred.

- 3719.21 Electrologists shall wash both hands using soap, warm water, and good mechanical action immediately before and after treating each patron.
- 3719.22 A fresh pair of nonsterile, disposable examination gloves shall be worn during the treatment of each patron and while cleaning instruments.
- 3719.23 Electrologists shall wash both hands before putting on gloves.
- 3719.24 If a needle pricks the glove of an electrologist, the electrologist shall remove and discard gloves, wash and dry hands, and then use a fresh pair of gloves.
- 3719.25 A sterile needle and sterile forceps shall be used for each patient. Needles shall not be re-used and shall be disposable.
- 3719.26 Sterile forceps or other sterile instruments shall be used for each patient to release ingrown hairs.
- 3719.27 Treatment solutions shall be labeled as to contents and covered when not in use.
- 3719.28 Skin areas to be treated shall first be cleansed thoroughly with seventy percent (70%) isopropyl alcohol or antiseptic lotion.
- 3719.29 Mucous membranes and the external auditory canal of the ear may not be treated without the written approval of a licensed physician.
- 3719.30 An electrologist shall not treat a person infected with any contagious skin disease or on a skin malignancy.
- 3719.31 One of the following applications shall be applied to the tissue after treatment:
- (a) Seventy percent (70%) isopropyl alcohol;
 - (b) Witch hazel;
 - (c) Hydrogen peroxide; or
 - (d) Other approved antiseptic for the skin.
- 3719.32 Ice, healing cream, or lotion may be used at the electrologist's discretion.
- 3719.33 Specific, written home care instructions shall be given to each patron following the first treatment and as needed.
- 3719.34 Disposable or damaged instruments shall be placed in a sharps container which is impervious to puncture. The instruments shall be disinfected with a freshly prepared 1:10 solution of household bleach and water consisting of one (1) part bleach and ten

(10) parts water, and allowed to stand for at least thirty (30) minutes. The solution shall then be poured off, and the container securely sealed and disposed of in compliance with local laws.

- 3719.35 Tips of epilator probe holders shall be wiped with a detergent germicide after each treatment.
- 3719.36 Epilator probe cords which have been in direct contact with a patron or practitioner shall be wiped with a detergent germicide after each treatment.
- 3719.37 The treatment lamp shall be wiped with a detergent germicide after each treatment.
- 3719.38 After each use, patron eyeshields shall be cleaned with soap or detergent and water, then rinsed and dried.
- 3719.39 A hospital-grade disinfectant-detergent registered by the U.S. Environmental Protection Agency (EPA) shall be used for cleaning environmental surfaces.
- 3719.40 Each electrologist's office and every institution teaching the clinical practice of electrolysis shall contain sterilization equipment adequate in size to accommodate forceps and soaking receptacles. Needles shall not be re-used.
- 3719.41 Needles or probes shall be pre-sterilized and disposable for single use.
- 3719.42 Transfer forceps and holding containers shall be kept clean and sterilized.
- 3719.43 Unused instruments in open containers shall be reprocessed after a twenty-four (24) hour period.
- 3719.44 Forceps and the soaking receptacle shall be rinsed, dried thoroughly, and placed on a steel tray or rack in the center of an autoclave or heat sterilizer, separating instruments and keeping them away from walls of the unit.
- 3719.45 One recommended method of sterilization is Moist Heat (Steam Under Pressure) autoclave.

(a) The following time-temperature relationships are recommended:

- (1) Fifteen to Twenty (15 to 20) minutes at one hundred twenty-one degrees centigrade (121°C) two hundred sixty degrees Fahrenheit (260°F), fifteen (15) psi (pounds per square inch) for unpackaged instruments;
- (2) Thirty minutes at one hundred twenty-one degrees centigrade (121°C) two hundred sixty degrees Fahrenheit (260°F), fifteen (15) psi (pounds per square inch) for packaged instruments.

- (b) The exposure times in §3719.45(a)(1) and (2) relate only to the time the material is heated at the specific temperature and does not include a penetration or heat-up lag time.

3719.46 Another approved method of sterilization is with a Dry Heat Oven.

- (a) The following time-temperature relationships are recommended:

(1) Three Hundred Forty degrees Fahrenheit (340°F), one hundred seventy degrees centigrade (170°C)/ one hour; and

(2) Three Hundred Twenty degrees Fahrenheit (320°F), one hundred sixty degrees centigrade (160°C)/two hours.

- (b) The temperatures in §3719.46(a)(1) and (2) relate to the time of exposure after attainment of the specific temperature and do not include a heat-up lag time.

3719.47 Sterile needles and forceps shall be stored in sterile covered containers until used.

3719.48 Forceps dropped on the floor or otherwise contaminated may not be used until sterilized. Needles dropped on the floor or contaminated shall be properly disposed of and replaced.

3719.49 Dry heat oven and autoclaves shall be registered with the Food and Drug Administration (FDA), and shall be cleaned, used, and maintained according to the manufacturer's instructions.

3720 BOOTH RENTALS/CHAIR RENTALS/SPACE RENTING

3720.1 Booth renting, chair renting, or space renting, by whatever name called, is recognized by the Board as an independent business and as such each booth, chair, or space must have a salon or shop owner's license, a manager's license, and, if applicable, a master business license or registration.

3720.2 Booth, chair, or space renting may be practiced by licensed barber managers or instructors, cosmetology managers or instructors, and specialty cosmetology managers or instructors in a licensed salon or shop that has a Certificate of Occupancy, obtained by the salon owner, for the appropriate practice or practices.

3721 MULTIPLE LICENSES NOT REQUIRED

3721.1 A licensed barber instructor is permitted to practice as a barber and as a manager without obtaining separate barber and manager licenses.

3721.2 A licensed barber manager is permitted to practice as a barber without obtaining a separate barber license.

- 3721.3 A licensed cosmetology instructor is permitted to practice as an operator and as a manager without obtaining separate operator or manager licenses.
- 3721.4 A licensed specialty cosmetology instructor is permitted to practice all disciplines within that specialty without obtaining any other professional specialty cosmetology license.
- 3721.5 A licensed cosmetology manager is permitted to practice as a cosmetology operator without maintaining an operator's license.
- 3721.6 A licensed specialty cosmetology manager is permitted to practice as a specialty cosmetology operator without maintaining a specialty cosmetology operator's license.

3722 REQUIREMENTS OF SCHOOLS TEACHING BARBERING, COSMETOLOGY AND SPECIALTY COSMETOLOGY

- 3722.1 A Barber, Cosmetology, or Specialty Cosmetology school approved by the District of Columbia Educational Licensure Commission or the Board shall comply with the sanitation provisions of these regulations.
- 3722.2 Every school shall be well lighted, heated, and ventilated, and shall be kept in a clean and sanitary condition.
- 3722.3 The walls, curtains, and floor coverings in a school shall be washed and kept clean.
- 3722.4 All schools shall be supplied with hot and cold running water.
- 3722.5 The premises shall be kept free from rodents, vermin, flies, or other disease vectors.
- 3722.6 The school may not be used for sleeping or living quarters.
- 3722.7 All hair, cotton, or other waste material shall be removed from the floor immediately, deposited in a closed container, and removed from the premises frequently.
- 3722.8 Rest rooms shall be kept in a sanitary condition and have a soap dispenser and disposable towels.
- 3722.9 All students shall be attired in clean, washable garments.
- 3722.10 All students shall wash their hands before attending each patron.
- 3722.11 Disposable gloves shall be worn if a student has a cut or open wound.

- 3722.12 Instruments used in direct contact with a client shall be washed in soap and water before being immersed in a disinfectant solution for the required length of time as specific in this regulation.
- 3722.13 Instruments shall be disinfected in any one of the following disinfecting solutions:
- (a) A commercially-marketed EPA-approved and registered disinfecting agent sold for the purpose of disinfecting implements and tools used in the practice of beauty culture, provided that all manufacturers' instructions are carefully followed;
 - (b) A solution of one part household bleach to ten parts water for ten (10) minutes.
 - (c) A solution of water mixed with either five percent (5%) carbolic acid or four percent (4%) formaldehyde for twenty (20) to thirty (30) minutes; or
 - (d) A solution of seventy percent (70%) alcohol for twenty (20) to thirty (30) minutes.
- 3722.14 Each school shall have at least one wet sanitizer containing a disinfectant solution and one closed drawer or cabinet that contains an active fumigant.
- 3722.15 Cleaned and disinfected implements and equipment shall be stored in a dry cabinet or drawer sanitizer that contains an active fumigant or electrical sanitizer.
- 3722.16 The use of neck dusters, powder puffs, sponges, styptic pencil, and lump alum or any other equipment or implement, which cannot be sanitized and disinfected, may not be used on more than one client.
- 3722.17 Lotions, oils and any other type of liquid shall be poured into a disinfected container or disinfected hand. Any excess remaining after application shall be discarded immediately and not returned to the original container or applied to another client.
- 3722.18 Lotions, ointments, creams, and powders shall be kept in clean, closed containers. All cosmetic containers shall be re-covered immediately after use.
- 3722.19 Every headrest and footrest for pedicures shall be covered with a clean towel or disposable paper for each client.
- 3722.20 A school shall have a closed cabinet in which laundered towels are stored and a separate bin or hamper for the disposal of soiled towels. If the school does its own laundering, the school shall have both an automatic washer and dryer on the premises.
- 3722.21 Creams shall be dipped from a container with a clean spatula, and the instrument may not come into contact with the patron. Creams may not be removed with the fingers.

- 3722.22 An instrument that caused a skin abrasion or cut shall be immediately cleansed, disinfected, sterilized, and inspected according to bacteriology and sterilization standards. If bleeding occurs, a tissue or cotton shall be used to blot up the blood. Blood-contaminated materials shall be disposed of immediately in a sealed, double plastic bag and all forceps shall be sterilized.
- 3722.23 A student whose hands come into contact with blood shall wash and disinfect them immediately.
- 3722.24 Pressing combs shall be kept clean and free of carbon by using a hot soda solution or similar cleansing agent. Between clients, pressing combs shall be scrubbed with a stiff brush, rinsed, disinfected, and dried.
- 3722.25 Curling irons shall be wiped with a clean cloth after use on each client. They shall be cleansed in a soap solution containing a portion of ammonia or similar cleansing agent and wiped dry each day to keep them clean and free from rust, grease, and dirt.
- 3722.26 Hot combs and curling irons shall be used in a well ventilated area and wiped free of grease and hair with a paper towel or cloth before their placement in the heater.
- 3722.27 A minimum of eight (8) combs and four (4) brushes shall be available for each student.
- 3722.28 Protective neck strips or similar coverings shall be used on each client.
- 3722.29 Shampoo bowls shall be washed after each shampoo and sanitized frequently with a disinfectant to ensure cleanliness.
- 3722.30 Permanent waving retention rods shall be cleansed and sanitized after each use. End papers shall be discarded immediately after use.
- 3722.31 Soiled combs, brushes, towels, or other used material shall be removed from the tops of workstations immediately after use.
- 3722.32 Hair clips, hairpins, bobby pins, or similar implements may not be placed in the mouth.
- 3722.33 Objects dropped on the floor shall not be used until they are cleansed and disinfected.
- 3722.34 Each barber, cosmetology, or specialty cosmetology school shall, where appropriate, contain the following:
- (a) Storage space for custodial equipment and supplies;
 - (b) Covered containers lined with disposable plastic bags for the daily removal of all waste materials;

- (c) Supplies of appropriate disinfectant and fungicide;
- (d) Clean laundered towels, hair capes, and shampoo capes;
- (e) Neck strips and suitable dispensers;
- (f) Hair dryers;
- (g) Hairdressing stands or dresserettes with a shelf and mirror; and
- (h) Facial or all-purpose chairs or tables.

3722.35 Each barber, cosmetology, or specialty cosmetology station or booth shall have the following equipment, where appropriate:

- (a) All-purpose barber, cosmetology, facial chair, or table;
- (b) Covered container for disinfecting tools;
- (c) Closed cabinet or covered container for clean tools;
- (d) Shampoo dispenser, if necessary;
- (e) Waving fluid dispenser, if necessary;
- (f) Closed container for waste materials;
- (g) Portable shampoo board where necessary;
- (h) All-purpose stool;
- (i) Barber chair with head rest having a changeable cover;
- (j) One (1) closed container for soiled linen;
- (k) One (1) closed container for used papers;
- (l) Automatic lathering device, where necessary;
- (m) Clean head-rest covers and suitable dispensers;
- (n) Manicuring stand, either stationary or movable, with a lamp;
- (o) At least two (2) complete sets of manicuring instruments;

- (p) One general purpose sink with running hot and cold water for every twelve (12) manicure stations;
- (q) Clean laundered towels and customer capes for each customer; and
- (r) Dispenser pumps, spray type containers, or spatulas to dispense fluids, creams, and lotions.

3722.36 Each barber, cosmetology, and specialty cosmetology school shall, where appropriate, have, at a minimum, the equipment required in this section:

- (a) There shall be at least one (1) sink with running hot and cold water for general salon purposes, and at least one (1) sink with running hot and cold water for shampoo purposes;
- (b) Sufficient electrical equipment and dermal lights for giving instruction in electrology, skin care, and electrical facials. Note: Equipment shall not be used to stimulate so as to contract, or for the purpose of contracting, the muscles of the body or face;
- (c) Mannequins, with full heads of hair, for each student;
- (d) Time clocks or timers;
- (e) One shampoo bowl for every ten (10) clinic stations;
- (f) One hair dryer for every six (6) clinic stations;
- (g) One facial chair or table for every five (5) students;
- (h) One manicure station for every five (5) students;
- (i) Electrical caps; and
- (j) Thermal hair straighteners:
 - (1) Non-electric comb;
 - (2) Non-electric curling iron (at least two (2) sizes);
 - (3) Stove for non-electric combs and curling irons; and
 - (4) Electric curling iron.

3722.37 Schools shall use text and reference books approved by the Board. Other teaching materials may be used to supplement the approved text and reference books.

- 3722.38 Schools shall provide the following materials to each student;
- (a) At least one (1) of the textbooks approved by the Board;
 - (b) Any two (2) approved texts other than the text provided to the students;
 - (c) The Performance Criteria developed by the Board;
 - (d) A copy of 17 DCMR Chapter 37;
 - (e) A list of text and reference books approved by the Board; and
 - (f) A supply kit that includes the necessary tools to perform the practical lessons.

- 3722.39 Student Practice Limitations include the following:

- (a) A student shall not be permitted to work upon a paying patron until he or she has completed the freshman period of training and instructions. The freshman period shall be ten (10) percent of the total training hours specified for each course.
- (b) A student shall not be permitted to work upon a paying patron until the student has completed all of the required technical instruction and practical training in the specific service or specialty involved.

3723 BOARD APPROVAL AND CERTIFICATION OF BARBER AND COSMETOLOGY SCHOOLS

- 3723.1 All schools are required to be licensed by the Educational Licensure Commission, as set forth in 16 DCMR Chapter 12.
- 3723.2 All schools must maintain a current license from the Educational Licensing Commission.

3724 [Reserved]

3725 SERVICE AND PRICING POLICY

- 3725.1 The owner or manager of each salon or shop shall post and maintain signs and/or provide written service and price lists stating the price or range of prices for each category of services rendered to the public.
- 3725.2 Each salon or shop shall post signs and/or price lists in English, which are clearly legible, and readable from each patron's chair at all times. Secondary signs and price lists in languages other than English are permitted, provided that the prices and

services listed on the English language and non-English language signs and price lists are identical.

- 3725.3 No licensee shall refuse to serve any patron based upon the patron's race, color, hair texture, or other discriminatory category, or for reasons prohibited by the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code 2-1401.01 *et seq.*) (2001), as amended, and any other District of Columbia or United States Federal Government anti-discrimination rule, regulation, or Act.

3726 MASSAGES AND SPA TREATMENTS

- 3726.1 Except as permitted by §3726.1 of this chapter, no barber or cosmetologist (including specialty cosmetology licensees) shall massage any part of a patron's body other than the scalp, face, neck, hands, or feet, nor shall any barber or cosmetologist perform any spa treatment services.
- 3726.2 Cosmetologists and estheticians may massage the skin of a patron's body, outside of the locations listed in §3726.1, if the massage is directly related to and necessary to performing esthetic skin treatments and does not rise to the level of what would ordinarily be considered therapeutic or sports massage under the D.C. Official Code.
- 3726.3 Performing or advertising activities requiring licensure that are outside of the scope of licensure under this chapter is prohibited unless the licensee obtains a license for such activity from the appropriate regulatory agency.
- 3726.4 No salon or shop shall advertise itself as a spa unless it provides a minimum of one water based treatment that uses water of known composition, is staffed by appropriately trained therapists, has a minimum standard of furnishings, and possesses the proper licenses required to offer such facilities. Approved water based treatments use a hydrotherapy unit designed for recreational or therapeutic use, which is not drained, cleaned, or refilled after each use. It may include, but is not limited to, units designed for hydro-jet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, therapeutic pool, hydrotherapy pool, whirlpool, hot spa, and hot tub.

3727 ENFORCEMENT AND PENALTIES

- 3727.1 The Director of the Department of Consumer and Regulatory Affairs, the Fire Chief, the Department of Health, the Chief of Police, and the Board of Barber and Cosmetology shall inspect or otherwise investigate every licensed salon or shop and any building or part of a building for which a salon or shop application has been filed with the District as follows:

- (a) The Director of Consumer and Regulatory Affairs shall determine conformity with the applicable provisions of laws and regulations enforced by the Department;
 - (b) The Fire Chief shall require that the building or part of the building shall comply with the applicable provisions of the laws and regulations relating to fire prevention and control;
 - (c) The Director of the Department of Health shall require that the premises comply with the applicable provisions of other laws and regulations relating to public health;
 - (d) The Chief of Police shall require that the licensees comply with the applicable provisions of the laws and regulations enforced by the Metropolitan Police Department; and
 - (e) The Board of Barber and Cosmetology shall determine conformity with the applicable provisions of laws and regulations relating to the practices of barbering and cosmetology.
- 3727.2 The applicant or licensee shall take appropriate action to ensure access to all parts of the premises for the purpose of facilitating inspection.
- 3727.3 Failure to allow and facilitate inspections by applicants or licensees shall be cause for withholding issuance of a new license, or the revocation or suspension of an existing license.
- 3727.4 Each license issued under the authority of this chapter shall be subject to revocation, suspension, or cancellation for failure by the licensee to comply with these regulations or;
- (a) For gross malpractice;
 - (b) For practicing while under the influence of alcohol and/or while under the influence of any controlled substance or dangerous drug as defined in the Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-901 et. seq.) (2001) without a prescription;
 - (c) For obtaining a license by fraud or misrepresentation;
 - (d) If the licensee is disciplined by a disciplinary authority in another jurisdiction or is convicted or disciplined by a court in any jurisdiction for conduct that would be grounds for disciplinary action under this section;
 - (e) Willfully misrepresents what services he or she may perform or tries to perform services beyond the scope authorized by the license;

- (f) Aids in the unauthorized practice of barbering or cosmetology;
- (g) Fails to pay civil fines imposed under this chapter;
- (h) Refuses to provide service for which he or she is licensed to any person for reasons prohibited by the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code 2-1401.01 *et seq.*) (2001), as amended, or any other District of Columbia or United States Federal Government anti-discrimination rule, regulation or Act; or
- (i) Fails to pay the applicable license fees.

- 3727.5 Any person who fails to comply with any provision of this chapter, violates a valid order of the Board, or violates a consent decree entered into with the Board shall, upon conviction, be punished by a fine not to exceed five thousand dollars (\$5000) or by imprisonment not to exceed ninety (90) days, for each failure to comply.
- 3727.6 Nothing in this chapter shall prevent the Director and Board from, in any circumstance, pursuing additional penalties as allowed under D.C. Official Code § 47-2853.17 (2001) or under Title 22 of the District of Columbia Official Code, if applicable.
- 3727.7 In the event of any failure to comply with the provisions of this chapter, each day of the failure shall constitute a separate offense, and the penalties prescribed in §3727.3 and §3727.5 shall be applicable to each separate offense.
- 3727.8 The violation of any of the provisions of this chapter or the failure to comply with any of the requirements of this chapter shall be cause for the institution of proceedings as provided for in chapter one of these regulations.

3799 DEFINITIONS

- 3799.1 When used in this chapter, each of the following terms shall have the meanings ascribed:

Applicant – Any individual seeking licensure by the Board that has submitted an official application and paid the applicable fees(s).

Apprentice – any person that learns barbering or cosmetology by taking classroom courses and working at a salon or shop to gain sufficient training and experience to become eligible to sit for the Board's barber or cosmetology license examination.

Barber - any person who is licensed to engage in any of the practices encompassed in barbering, especially hair and scalp care.

Barbering – any one of any combination of the following practices when done upon the head and neck for cosmetic purposes only, and when done for payment either directly or indirectly, or without payment for the public generally constitutes the practice of barbering within the meaning of this chapter. Barbering includes; shaving and/or trimming the beard, cutting the hair of any person of either sex for compensation or other consideration, received by the person performing the service, as well as giving facial and scalp massage or treatments with oils creams, lotions, or other preparations either by hand or mechanical appliances; singeing, shampooing, or applying tonics to the hair; or applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions, to the scalp, face, or neck. Barbering shall not include manicuring, electrology, or braiding.

Barber School – any facility licensed to teach the art of barbering.

Barbershop– any building or portion of a building, vehicle, and station in which any person is engaged in the practice of barbering. For the purposes of this chapter, this term includes barber schools.

Beauty School – any facility licensed to teach the art of barbering or cosmetology.

Board – the Board of Barber and Cosmetology

Braider – any licensed person who engages in the practice of forming human and synthetic hair into braids or other natural hairstyles without using chemicals.

Cosmetologist – any licensed person who engages in hair styling and/or the cosmetic arts, such as hair styling and skin care, and any of the practice of cosmetology, including the specialty cosmetologists, whether as an owner, manager, operator, instructor, demonstrator, manicurist, or student, but does not including shaving or trimming the beard or moustache of an individual.

Demonstrator – A person that conducts sales demonstrations of barbering or cosmetology products and/or equipment and who does not charge the public for any services rendered or materials used in connection with a demonstration.

Director – the Director of the District of Columbia, Department of Consumer and Regulatory Affairs or the Director's agent.

Electrologist – any licensed person who engages in the practice of permanently removing unwanted hair with an electric current or short wave alternating current, or a combination thereof.

Esthetician – any licensed person who engages in the practice of applying creams, lotions, scrubs, polishes, waxes, cosmetics, eyelashes, and other beauty treatments directly onto the skin to bring about a temporary improvement in appearance, and does not exclude peels and microdermabrasion; and who may remove superfluous hair from the face and neck area of any person by the use of depilatories, waxing or tweezers, but does not include barbering or the branches of cosmetology of cosmetologist, braider, electrologist, or manicurist.

Immediate Supervision - supervision in which the supervisor is physically present and is either discussing or observing the student's or applicant's practice.

Instructor – any person who is a licensed barber manager, cosmetology manager, or specialty cosmetology manager and who is also authorized to teach barbering, cosmetology, or specialty cosmetology as a profession as provided for in this chapter.

License – any approval, certificate, registration, permit, statutory exemption, or other form of permission to practice an occupation or profession, as granted by this board.

Manager – any licensed barber, cosmetologist, or specialty cosmetologist who has successfully completed an additional 500 hours of training and has passed a written examination. A manager may manage a shop or a salon.

Manicurist – any licensed person who engages in the practice of applying creams, lotions, scrubs, and polishes, and waxes to cosmetically treat the hands and feet as well as trimming, shaping, enhancing, and decorating the fingernails and toenails.

Person – any individual, natural person, firm, corporation, association, or partnership, company, organization, or society.

Practical Training - the actual performance by a qualified student of a complete service on another person or mannequin.

Premises – a rest room, waiting room, hall, lounge, storage room or area, fence, shed, garage, or other accessory building appurtenant to a salon and its surrounding area, where barbering, braiding, manicuring, electrolysis, esthetics, or cosmetology is practiced and which is under the control of the licensee or used by the licensee directly or indirectly in connection with the shop or salon.

Salon – includes barber, cosmetology, beauty, and specialty shops and salons.

Shampooer – a person that exclusively washes, rinses, and shampoos hair.

Spa Treatments – services performed outside of the scope of licensure under this chapter that may require separate business or professional licensure under existing D.C. Official Code sections and other Titles of the District of Columbia Municipal Regulations. Such services include but are not limited to therapeutic massage; sports massage; aerobics; water based relaxation therapies conducted in a basin, tub or pool; mineral baths; hot springs; steam rooms; and physical therapy.

Substantially Full-Time – at least thirty (30) hours per week.

Supervisor – a licensed barber manager or instructor, cosmetology manager or instructor, or specialty cosmetology manager or instructor.

Technical Instruction – the instruction of students by demonstration, lecture, classroom participation, or examination.

Water Closet – a room with a sink and a toilet.

Any person desiring to comment on these proposed rules should submit comments in writing no later than thirty (30) days from the date of the publication of this notice in the D.C. Register. Comments should be filed with Karen Edwards, Office of the General Counsel, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., 9th Floor, Washington, D.C. 20001. Please place **“BARBER/COSMETOLOGY”** conspicuously on any correspondence sent in response to the notice. Additional copies of these proposed rules may be obtained at that address. A copying fee of one dollar (\$1.00) will be charged for each copy of the proposed rules requested.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with §§ 951 through 958 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2001), hereby gives notice of the intent to adopt, in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. These rules would amend Chapter 38 of the *D.C. Personnel Regulations*, Management Supervisory Service, to modify the entire chapter. Upon adoption, these rules will amend Chapter 38 of the *D.C. Personnel Regulations*, Management Supervisory Service, published at 48 DCR 2812 (March 30, 2001).

CHAPTER 38**MANAGEMENT SUPERVISORY SERVICE**

Chapter 38 of the D.C. Personnel Regulations is amended as follows:

3800 APPLICABILITY

- 3800.1 This chapter applies to all appointments to the Management Supervisory Service under the authority of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2001).
- 3800.2 The Management Supervisory Service is established within the District government to ensure that each agency has the highest quality of managers and supervisors who are responsive to the needs of the government.
- 3800.3 The Management Supervisory Service consists of all employees who meet the definition of "management employee" pursuant to § 1411 (5) of the CMPA (D.C. Official Code § 1-614.11 (5)) (2001), that is, employees whose functions include responsibility for project management and supervision of staff and the achievement of the project's overall goals and objectives.
- 3800.4 The following employees are excluded from the Management Supervisory Service:
- (a) Employees appointed to the Career Service under the authority of § 801 of the CMPA (D.C. Official Code § 1-608.01) (2001);
 - (b) Employees appointed to the Educational Service under the authority of § 801-A of the CMPA (D.C. Official Code § 1-608.01a) (2001);

- (c) Employees appointed to the Legal Service under the authority of § 851 of the CMPA (D.C. Official Code § 1-608.51 *et seq.*) (2001);
- (d) Employees appointed to the Excepted Service under the authority of §§ 901 through 908 of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.08) (2001);
- (e) Employees appointed to the Executive Service under the authority of § 1051 of the CMPA (D.C. Official Code § 1-610.51) (2001);
- (f) Employees of the Board of Education;
- (g) Employees of the Board of Trustees of the University of the District of Columbia;
- (h) Uniformed members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department;
- (i) Employees occupying positions included in recognized collective bargaining units; and
- (j) Employees with acting supervisory or managerial responsibilities only in the absence of the regular supervisor or manager.

3800.5 Positions that have some supervisory duties and responsibilities but less than those described in the appropriate classification guide shall be excluded from the Management Supervisory Service.

3800.6 Persons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Service.

3801 COMPENSATION SYSTEM AND PAY SCHEDULES

3801.1 Until such time as the Mayor adopts a new compensation system, the compensation system that was in effect on December 31, 1979 is the system applicable to the compensation for positions in the Management Supervisory Service.

3801.2 Individuals appointed to the Management Supervisory Service shall be paid from the appropriate Management Supervisory Service Pay Schedule.

3801.3 The rates of pay on the Management Supervisory Service Pay Schedules shall not be used to set pay upon subsequent appointment to a position in the Career Service.

3802 INCUMBENT CLASSIFICATION SYSTEM

3802.1 Until such time as the Mayor adopts a new classification system, the classification system that was in effect on December 31, 1979 is the system applicable to the classification of positions in the Management Supervisory Service.

3803 METHOD OF MAKING MANAGEMENT SUPERVISORY SERVICE APPOINTMENTS

- 3803.1 Except as specifically limited in this chapter, all initial appointments and subsequent assignments and promotions to the Management Supervisory Service shall be by open competition, involving positive recruitment and examining procedures designed to achieve maximum objectivity, reliability, and validity. All such initial appointments and subsequent assignments and promotions shall be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements with appropriate regard for affirmative action goals as provided by law and as determined under this chapter.
- 3803.2 An appointment to the Management Supervisory Service may be for an indefinite period, or a time-limited appointment.
- 3803.3 As an appointment to the Management Supervisory Service is an at-will appointment, a date specifying the duration of a time-limited appointment shall not prevent termination of the employee occupying such a position prior to the date specified; provided that the termination is effected pursuant to § 3819.

3804 SUPERIOR QUALIFICATIONS APPOINTMENT

- 3804.1 As provided in Chapter 11 of the District Personnel Manual, superior qualifications appointments may be made at such step of the appropriate grade as the personnel authority may authorize for this purpose.
- 3804.2 Superior qualifications appointments shall only apply to initial appointments with the District government.

3805 PROHIBITED PERSONNEL PRACTICES

- 3805.1 No person shall interfere in the competitive process by influencing another person to withdraw from competition for any position in the Management Supervisory Service for the purpose of either improving or injuring the prospects of any applicant for appointment or selection.
- 3805.2 In accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1401.01 *et seq.*) (2001) (Act), no person who has authority to take or recommend any personnel action with regard to the Management Supervisory Service shall discriminate against applicants or employees in any aspect of employment on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination also prohibited by the Act.
- 3805.3 No public official may appoint, employ, promote, advance, or advocate for appointment, employment, or promotion, an individual who is a relative of the public

official, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control.

- 3805.4 A personnel authority may not appoint, employ, promote, or advance an individual in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual.
- 3805.5 A public official who appoints, employs, promotes, advances, or advocates such appointment, employment, promotion, or advancement of any individual in violation of § 3805.3 shall be required to reimburse the District for any funds improperly paid to the individual.

3806 QUALIFICATION STANDARDS AND GENERAL REQUIREMENTS FOR SELECTION PROCEDURES

- 3806.1 A person selected to a position in the Management Supervisory Service shall meet the minimum qualification standards for the position for which selected.
- 3806.2 The Director of Personnel shall establish standards with respect to education, training, experience, suitability, or other requirements used to evaluate applicants and employees for placement in the Management Supervisory Service, consistent with all applicable laws and regulations.
- 3806.3 The Director of Personnel may adopt new qualification standards under § 3806.2. Until such adoption, the federal qualification standards series of handbooks and applicable supplementary publications shall remain applicable.
- 3806.4 Whenever the practice of certain occupations and professions is subject to licensure requirements (as established by District, State, or federal law), the possession of a license shall constitute a qualification requirement.
- 3806.5 As applicable, each personnel authority shall establish employee selection procedures for the Management Supervisory Service. Such procedures shall be consistent with the standards established by these regulations and applicable law, including § 953 of the CMPA (D.C. Official Code § 1-609.53) (2001), and federal issuances pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*), and professionally developed standards for examination and selection.
- 3806.6 The applicant evaluation and qualification standards, and the employee selection procedures for the Management Supervisory Service developed by the personnel authority as required by §§ 3806.2 through 3806.5 shall be incorporated in their entirety, or by reference, in the District Personnel Manual (or any other procedural manual developed). An independent personnel authority with Management Supervisory Service employees may adopt the provisions of the District Personnel Manual (or any other procedural manual developed) applicable to the Management Supervisory Service or incorporate them in a personnel manual developed by the independent personnel authority.

- 3806.7 All personnel actions appointing employees to the Management Supervisory Service, or affecting employees within the Management Supervisory Service, shall comply with the standards and selection procedures established by the personnel authority, and applicable rules as set forth in these regulations.
- 3806.8 When the personnel authority finds that an agency has not complied with competitive principles of this chapter, either in an individual case or on a program basis, the personnel authority shall require the agency to rectify the error or omission.
- 3806.9 All competitive placements shall be made in accordance with the general principles in this section and the specific requirements of applicable sections of this chapter. These principles and requirements shall also govern noncompetitive placements, to the maximum extent practicable.
- 3806.10 Selection procedures for competitive placement shall do the following:
- (a) Be practical in character and fairly test the relative ability and fitness of candidates for jobs to be filled;
 - (b) Result in selection from among the best qualified candidates;
 - (c) Be developed and used without discrimination; and
 - (d) Comply with other requirements of applicable equal employment opportunity and affirmative action laws and regulations.
- 3806.11 Selection procedures for the Management Supervisory Service shall be based on a job analysis (which may cover a single position or group of positions, or an occupation or a group of occupations having common characteristics) to identify and evaluate the factors that are important in evaluating candidates, and the following:
- (a) The basic duties and responsibilities; or
 - (b) The tasks or the knowledge, skills, and abilities required to perform the duties and carry out the responsibilities.
- 3806.12 A minimum educational requirement shall not be established except as authorized under §§ 3806.2 through 3806.4.
- 3806.13 The personnel authority may require an applicant to provide documentary evidence of his or her qualifications for an appointment in the Management Supervisory Service.

3807 COMPETITIVE PLACEMENT

- 3807.1 Except as provided in this chapter, competitive procedures shall apply to all initial appointments to the Management Supervisory Service, and to subsequent assignments and placements to positions in that service, including the following:
- (a) Promotions;

- (b) Temporary promotions under § 3814 exceeding one hundred twenty (120) days;
- (c) Selection for details for more than two hundred forty (240) days to a position at a higher grade or to a position at the same grade level with known promotion potential; and
- (d) Selection for a position, including by reassignment or demotion, with more promotion potential than the last grade held under a Management Supervisory Service competitive appointment.

3808 NONCOMPETITIVE PLACEMENT

3808.1 Competitive procedures shall not apply to the following actions within the Management Supervisory Service:

- (a) The following types of Management Supervisory Service promotions:
 - (1) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
 - (2) A promotion resulting from an employee's position being reclassified at a higher grade because of accretion of additional duties and responsibilities without planned management action; or
 - (3) A career ladder promotion if the original competition for the position clearly established the career ladder;
 - (4) A temporary promotion under this chapter for a period of one hundred twenty (120) days or less.
- (b) Indefinite reassignment or transfer to a position of the same grade with no known promotion potential;
- (c) A temporary reassignment for a period of one hundred twenty (120) days or less;
- (d) A reassignment or demotion pursuant to §§ 3812.4 through 3812.6;
- (e) Consideration of a candidate not given proper consideration in a competitive promotion action; or promotion of an employee who was denied promotion as a result of other error, on order of the D.C. Office of Personnel or independent personnel authority; and
- (f) Detail of two hundred forty (240) days or less to a position at a higher grade or to a position with known promotion potential.

3809 EXAMINING SYSTEM, ESTABLISHMENT AND TERMINATION OF REGISTERS

- 3809.1 Competitive selection procedures shall consist of assembled examining procedures, which may include written, oral, or performance examinations, or a combination thereof; or unassembled examining procedures which may include establishment of rating and ranking plans or selection panels, or both.
- 3809.2 Each competitive selection shall be as a result of a vacancy announcement, available to the public for not less than five (5) workdays, and appropriate recruitment activities.
- 3809.3 The personnel authority shall prescribe the absolute and relative weights to be assigned the individual components of the examination, and, where numerical weights are used, shall assign final ratings on a scale with a maximum value of one hundred (100). In these circumstances, candidates who do not receive at least a rating of seventy (70) shall be rated as "ineligible."
- 3809.4 Where numerical ratings are not used, and the results of the examination are to be used only to distinguish those who successfully completed the examination from those who did not, candidates may be rated as "eligible" or "ineligible."
- 3809.5 When categorical rankings are used, candidates may be rated as "Highly Qualified," "Well Qualified," "Qualified," or "Ineligible."
- 3809.6 Each applicant who meets the minimum requirements for entrance to an examination and is rated seventy (70) or more (when numerical ratings are used), or at least "qualified" (when categorical rankings are used), or "eligible" (when pass-fail ratings are used) in the examination is eligible for consideration for appointment.
- 3809.7 The personnel authority shall add five (5) points to the earned numerical rating of each applicant claiming or entitled to residency preference, as appropriate, under Chapter 3 of these regulations.
- 3809.8 All job-related experience, regardless of whether pay was received shall be creditable.
- 3809.9 The name of each applicant determined to be eligible for the position to be filled, subject to any subsequent suitability determination, shall be listed on a register in accordance with §§ 3809.3 through 3809.7.
- 3809.10 Unless otherwise required by an affirmative action plan established in accordance with applicable legal requirements or by law or court order, applicants shall be certified from the register in order of their relative standing on the register, except that applicants who claimed or are entitled to a residency preference pursuant to Chapter 3 of these regulations shall be listed before non-preference candidates as specified in that chapter, and shall be properly identified on the selection certificate as having claimed or being entitled to a residency preference.

- 3809.11 A maximum of ten (10) eligibles shall be certified for each vacancy, and the determination of the number of persons certified shall be based on an evaluation of the internal statistical characteristics of each selection procedure involved, the quantity and quality of competitors, residency preference considerations, equal employment opportunity considerations, and any other appropriate factors; however, more than the maximum of ten (10) may be submitted if an agency provides written justification to the personnel authority.
- 3809.12 Selecting officials may select candidates for appointment from among those listed, provided that a non-preference candidate shall not be selected when there is a residency preference candidate on the selection certificate, or return the certificate to the personnel authority without selection.
- 3809.13 The Director of Personnel or independent personnel authority shall publish instructions and procedures in the District Personnel Manual (or any other procedural manual developed) to set forth the basic rating and ranking plan requirements, and all other requirements of the examination process.

3810 SUITABILITY

- 3810.1 This section applies to all Management Supervisory Service positions and appointments thereto, except as specified elsewhere in this section.
- 3810.2 Each personnel authority shall designate a person to administer the oath of office to each employee of an agency. The oath shall be as follows: "I, (employee's name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office of which I am about to enter."
- 3810.3 Each personnel authority shall determine, as part of the suitability investigation, whether an individual being considered for appointment is or has been involved in any activities that constitute a reasonable basis for concluding that the person would not faithfully discharge the duties of the position for which he or she is being considered.
- 3810.4 For the purposes of this chapter, no person shall be considered suitable for employment in the District government who advocates the overthrow of the governments of the United States, the District of Columbia, or both by unconstitutional means.
- 3810.5 Each personnel authority shall conduct pre-employment inquiries as follows:
- (a) Every appointment to a position in the Management Supervisory Service shall be subject to completion of at least three (3) personal references checks to ascertain character, reputation, whether the reference would recommend the selectee or appointee for the position for which the individual is being considered, relevant personal habits, and other relevant personal qualities;
 - (b) Prior employment checks for the purpose of verifying:

- (1) Dates of employment;
 - (2) Salary or other compensation received;
 - (3) Titles held and nature of duties performed;
 - (4) Reasons for leaving employment; and
 - (5) If the person providing the information would rehire the selectee or appointee;
- (c) If required pursuant to § 3806.4, the possession of a license shall be verified;
- (d) If required as a job-related qualification standard such as is the case in the professional engineering field, the possession of a college degree from an accredited school and in the appropriate professional field shall be verified, including semester hours or other measures of credit completed, periods of attendance, type of degree and date conferred;
- (e) If considered necessary by the personnel authority, and in addition to the pre-employment inquiries required under §§ 3810.5(a) through 3810.5(d), miscellaneous checks such as professional standing and other inquiries may also be conducted;
- (f) The minimum number of checks referred to in § 3810.5(b) shall be determined by the personnel authority as practicable, on a case by case basis, and the checks made with the former employers of the selectee or appointee (and, as appropriate, the current employer), except that personal references may be utilized instead of or in addition to checks with former employers as deemed necessary by the personnel authority.
- 3810.6 Each personnel authority shall determine which Management Supervisory Service positions, in addition to being subject to § 3810.5, are subject to background investigation, including mandatory criminal background checks pursuant to law or regulation and, in advertising a vacancy for such a position, shall include a statement to that effect on the vacancy announcement. The personnel authority shall publish in its personnel manual positions subject to background investigation.
- 3810.7 A background investigation pursuant to § 3810.6 shall be conducted in accordance with the following:
- (a) Before conducting a background investigation, a personnel authority shall determine the degree of sensitivity of the position being filled in order to determine the scope of the investigation. Based on that determination, the background investigation may cover, in addition to the requirements in § 3810.5(a) through 3810.5(e), the following:
 - (1) Additional personal references checks;
 - (2) Employment history for a specific number of past years;

- (3) A criminal background check;
 - (4) Highest education completed or last attended beyond high school;
 - (5) A credit check;
 - (6) A traffic record check; or
 - (7) A newspaper/magazine/media search on the individual;
- (b) In conducting a background investigation, a personnel authority shall attempt to verify any derogatory information by seeking it from more than one (1) source, asking former employers and other sources for permission to name them as the source and, as needed, obtaining a written release from the subject.
- 3810.8 Unless otherwise provided by law or regulation, in filling a position subject to background investigation, an investigation need not be conducted if the prior position the individual held was subject to one and the nature of the personnel action for the new appointment is one (1) of the following:
- (a) Promotion;
 - (b) Demotion;
 - (c) Reassignment; and
 - (d) Appointment, or conversion to an appointment made by an agency of an employee of that agency who has been serving continuously with that agency for at least one (1) year in one (1) or more positions under an appointment subject to background investigation.
- 3810.9 A personnel authority may determine, on the basis of pre-employment inquiries under § 3810.5 or background investigations under § 3810.7, or both, that an individual is not suitable and may thereby deny him or her appointment, or instruct an agency to terminate the individual from District government service.
- 3810.10 Before taking action against a person for suitability disqualification, at the discretion of the personnel authority, the person may be given an opportunity to explain the derogatory information, within fifteen (15) days of being notified thereof, in order to avoid errors which might otherwise result from mistakes in identity, or where mitigating circumstances may exist which are unknown to the personnel authority;
- 3810.11 As appropriate, § 3810.10 shall be applied in the case of applicants, eligibles, and selectees or appointees, as well as to employees who have apparently violated the laws, rules, or regulations governing the Management Supervisory Service.
- 3810.12 The reasons which may be used in making a determination of disqualification due to unsuitability under § 3810.9 may include, but shall not be limited to the following:
- (a) Delinquency or misconduct in prior employment;

- (b) Criminal, dishonest, or other conduct of a nature that causes discredit to the District government;
 - (c) Intentional false statement of any material fact or deception or fraud in examination or appointment;
 - (d) Illegal use of drugs, or abuse of alcohol or other controlled substances; or
 - (e) Any other legal disqualification for appointment.
- 3810.13 In making its determination under § 3810.9, a personnel authority shall consider the following additional factors, to the extent that these factors are deemed pertinent to the individual case:
- (a) The kind of position for which the person is being considered or in which the person is employed, including its sensitivity;
 - (b) The nature and seriousness of the conduct, occurrence or information;
 - (c) The circumstances surrounding the conduct or occurrence;
 - (d) The recency of the conduct or information;
 - (e) The age of the applicant or appointee at the time of the conduct or occurrence;
 - (f) Contributing social or environmental conditions; or
 - (g) Rehabilitation, or efforts toward rehabilitation.
- 3810.14 Unless otherwise provided pursuant to law or regulations, an appointment to a position identified under § 3810.6 shall be subject to background investigation for one (1) year from the date of appointment to continue the personnel authority's jurisdiction to investigate the qualifications and suitability of the individual after appointment and to authorize the personnel authority to require termination when it finds that the individual is disqualified for District government employment.
- 3810.15 Unless otherwise provided pursuant to law or regulations, when a person is disqualified for any of the reasons listed in § 3810.12 or for other reasons not listed, a personnel authority, at its discretion, may continue to rely on that determination with regard to subsequent applications for appointment to the Management Supervisory Service, for a period of not more than three (3) years from the date of determination of disqualification, after which a new background investigation shall be required.
- 3810.16 On expiration of the three-year (3-year) period under § 3810.15, a new background investigation shall be conducted and a re-determination made before a person may be appointed to any position in the Management Supervisory Service.
- 3810.17 Records and files pursuant to this section shall be subject to the following:

- (a) Disclosure of information related to suitability shall be maintained in strict confidence in accordance with this section and with Chapter 31 of these regulations;
- (b) Sources of information shall not be disclosed except as specifically authorized in this chapter and in Chapter 31 of these regulations;
- (c) When reports of pre-employment inquiries or background investigations are loaned to a personnel authority by an investigating agency, the restrictions which the investigating agency has placed on the content of the reports shall be observed by the personnel authority;
- (d) Derogatory information shall be referred to in such a way as to protect a confidential source of information from disclosure when questioning employees about matters which relate to possible suitability disqualifications;
- (e) Except as provided in this section or by Chapter 31 of these regulations, the sources of information contained in reports of investigations conducted by a personnel authority or designee shall not be disclosed to the person investigated, nor may the information be discussed with him or her in a manner which would reveal or permit him or her to deduce the source of the information;
- (f) The restrictions contained in § 3810.17(e) shall not apply to the following:
 - (1) Information of public record; and
 - (2) Information from District personnel records which could be obtained on request by the employee under the provisions of Chapter 31 of these regulations; and
- (g) Other sources of information in reports of investigation may be disclosed to the subject of the investigation only if the personnel authority obtains the information independently, such as by interviewing the subject, or by obtaining permission, in writing, from the sources named to use the information and to identify the source.

3811 MERIT PROMOTION REQUIREMENTS

- 3811.1 Except as specified in this chapter, all promotions to or within the Management Supervisory Service shall be by open competition. Promotions shall be based on merit.
- 3811.2 The personnel authority shall ensure that each employee within the area of consideration who is absent for legitimate reason, for example, on detail, leave, at training courses, in the military service, on disability compensation, or on temporary assignment under Chapter 27 of these regulations, receives appropriate consideration for promotion.
- 3811.3 To be eligible for promotion, a candidate shall meet minimum qualification standards adopted in accordance with § 3806.3.

- 3811.4 Due weight may be given to performance evaluations and incentive awards of a candidate.
- 3811.5 Selection procedures shall provide for an agency's right to select or not select from among a group of best-qualified candidates.
- 3811.6 The area of consideration shall be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of positions covered.
- 3811.7 The minimum area of consideration shall be the agency, except that a smaller area may be authorized by the personnel authority in a situation that meets criteria established by the personnel authority.
- 3811.8 Administration of the promotion procedures shall include record keeping, the provision of necessary information to applicants and the public, and ensuring that each individual's right to privacy is protected.
- 3811.9 Each personnel authority shall maintain a record of each promotion sufficient to allow reconstruction of the promotion action, including documentation of how each candidate was rated and ranked.
- 3811.10 All promotion records shall be retained as specified in the appropriate personnel retention schedules or other appropriate retention document.

3812 PLACEMENT BY REASSIGNMENT OR DEMOTION

- 3812.1 A personnel authority may fill a vacancy within the Management Supervisory Service by reassignment of a Management Supervisory Service employee to another position of the same grade, either competitively or non-competitively, as provided in this section.
- 3812.2 A temporary reassignment may be made for a period not to exceed one (1) year.
- 3812.3 A temporary reassignment exceeding one hundred twenty (120) days to a position with established promotion potential higher than the currently held position shall be effected competitively.
- 3812.4 An agency may reassign, or reduce the grade of, an employee who has been placed on a Performance Improvement Plan pursuant to Chapter 14 of these regulations and who, at the end of the Performance Improvement Plan, is found to have failed to meet the requirements of the Plan.
- 3812.5 Any reassignment or demotion pursuant to § 3812.4 shall be to a vacant Management Supervisory Service position for which the affected employee qualifies; provided that there is no diminution in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3812.6 When, as a result of attrition, reductions in force, reorganizations, or approved realignments within an agency, a Management Supervisory Service employee ceases

to perform managerial or supervisory functions or duties, the personnel authority may abolish the Management Supervisory Service position, and reassign or demote the employee to a vacant Management Supervisory Service position for which he or she qualifies; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.

- 3812.7 Any reassignment or demotion pursuant to §§ 3812.4 through 3812.6 shall be effected non-competitively.
- 3812.8 An employee may voluntarily accept a reassignment or demotion pursuant to §§ 3812.4 through 3812.6, or be terminated as specified in § 3819.

3813 TAPER APPOINTMENT

- 3813.1 A personnel authority may fill a Management Supervisory Service vacancy in a continuing position, in the absence of lists of eligibles, by a Temporary Appointment Pending Establishment of a Register (TAPER appointment).
- 3813.2 A person appointed to a TAPER appointment shall meet the minimum qualifications standards for the position.
- 3813.3 A TAPER appointment shall be terminated as soon as lists of eligibles for Management Supervisory Service appointment can be established by open competition in accordance with this chapter; shall not exceed ninety (90) days; and may be extended for an additional period of ninety (90) days only upon determination that a list of eligibles cannot be created.
- 3813.4 A person appointed to a TAPER appointment may be converted to a Management Supervisory Service appointment non-competitively if the TAPER appointment was made as a result of open competition.

3814 TEMPORARY PROMOTION

- 3814.1 A Management Supervisory Service employee may be temporarily promoted to a higher-grade Management Supervisory Service position without competition for any period of thirty (30) days or more and not exceeding one hundred twenty (120) days.
- 3814.2 Competitive procedures shall be used for a temporary promotion over one hundred twenty (120) days. In computing the days, prior service under all details to higher grade positions or temporary promotions shall be counted, whether competitive or noncompetitive, during the preceding twelve (12) months.
- 3814.3 A competitive temporary promotion shall be in accordance with the following:
- (a) It shall be for a period of one (1) year or less; and
 - (b) It may be made for an indefinite period without further competition, provided that the original competition made known to all potential applicants the fact that it might lead to an indefinite promotion.

- 3814.4 A temporary promotion shall not be used for the purpose of training or evaluating an employee in a higher-grade position.
- 3814.5 A Career or Excepted Service employee may be temporarily promoted to a Management Supervisory Service position for which he or she qualifies, as specified in this section, except that a Career Service employee may be promoted to a Management Supervisory Service position without losing his or her existing status in the Career Service.

3815 DETAIL

- 3815.1 A Management Supervisory Service employee may be detailed to another Management Supervisory Service position to meet a temporary employment need for a period of not more than one hundred twenty (120) days to an established position or two hundred forty (240) days to an unestablished position; and, unless prohibited by this section, the detail may be extended by the personnel authority in increments of one hundred twenty (120) days.
- 3815.2 A detail to an established position as defined in Chapter 11 of these regulations may be made for up to one (1) year during a major reorganization.
- 3815.3 All details to established higher graded positions extending beyond two hundred forty (240) days shall be made by competition.
- 3815.4 No detail to a higher graded position or to an unestablished position as defined in Chapter 11 of these regulations shall extend beyond one (1) year, unless the personnel authority determines that highly unusual circumstances warrant an extension beyond one (1) year.
- 3815.5 The provisions of §§ 3815.2 through 3815.4 shall apply to a detail of a Career or Excepted Service employee to a position that would otherwise be in the Management Service and for which the employee qualifies, except that a Career Service employee may be detailed to a Management Supervisory Service position without losing his or her existing status in the Career Service.

3816 MANDATORY CONTINUING EDUCATION AND TRAINING

- 3816.1 Each employee appointed to the Management Supervisory Service shall be required to maintain and enhance his or her management and supervisory skills and to attend requisite training courses every year as prescribed by the personnel authority.
- 3816.2 The Director of Personnel shall publish instructions and procedures in the District Personnel Manual (or any other procedural manual developed) to set forth the basic requirements for mandatory continuing education and training pursuant to this section.
- 3816.3 Failure of an employee to complete the prescribed training within time frames specified by the personnel authority may result in administrative action against the employee.

3817 PERFORMANCE MANAGEMENT FOR MANAGEMENT SUPERVISORY SERVICE

3817.1 Employees in the Management Supervisory Service shall be subject to the provisions of Chapter 14 of these regulations.

3818 RESIDENCY PREFERENCE FOR MANAGEMENT SUPERVISORY SERVICE

3818.1 The residency preference provisions of § 801(e) (1), (2), (3), (5), (6), and (7) of the CMPA (D.C. Official Code § 1-608.01(e) (1), (2), (3), (5), (6), and (7)) (2001) and Chapter 3 of these regulations shall apply to employment in the Management Supervisory Service.

3819 EMPLOYEE RIGHTS

3819.1 An appointment to the Management Supervisory Service shall be an at-will appointment. A person appointed to a position in the Management Supervisory Service shall not acquire Career Service status, shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time.

3819.2 An employee in the Management Supervisory Service shall be provided a 15-day notice prior to termination.

3819.3 Pursuant to § 954 of the CMPA (D.C. Official Code § 1-609.54 (b)) (2001), an employee in the Management Supervisory Service shall be entitled to severance pay upon termination for non-disciplinary reasons.

3819.4 A Management Supervisory Service employee who has been placed on a thirty (30) to ninety (90) day Performance Improvement Plan pursuant to Chapter 14 of these regulations and who, at the end of the Performance Improvement Plan is found to have failed to meet the requirements of the Plan, may be terminated as specified in § 3819.2.

3819.5 Placement of an employee on a Performance Improvement Plan shall not prevent termination of the employee prior to the end of the thirty (30) to ninety (90) day period of such plan, provided that the termination is for reasons not related to performance.

3819.6 Upon termination for non-disciplinary reasons, and at the discretion of the personnel authority, a person with Career or Educational Service status or with Excepted Service status due to appointment as an attorney in that Service, may retreat, within three (3) months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted and for which he or she qualifies.

3819.7 A retreat pursuant to § 3819.6 shall be to a position in the Service in which the person acquired status.

3819.8 Terminations from the Management Supervisory Service shall not be subject to administrative appeal.

3899 DEFINITIONS

For the purposes of this chapter, the following terms have the meaning ascribed:

Agency – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term “agency” shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency, and shall include boards and commissions as described in § 301 (13) of the CMPA (D.C. Official Code § 1-603.01 (13)) (2003 Supp).

Area of consideration – the area in which the agency makes a search for eligible candidates and from which applications will be accepted in a specific competitive recruitment action.

Background investigation – thorough inquiry into the past and present conduct and behavior of an applicant to determine his or her suitability for appointment.

Days – calendar days, unless otherwise specified.

Demotion – the change of an employee to a lower grade, or to a position with a lower basic pay rate, when both the old and new positions are under the same pay schedule or in different pay schedules.

Detail – the temporary assignment of an employee to a different position for a specified period, with the employee returning to the position from which detailed at the end of the detail. A position is not filled by a detail, as the employee continues to be the incumbent of the position from which detailed.

Disqualification – a debarment, for suitability purposes, which precludes considering an applicant for employment or from taking an examination for employment or which results in separation from employment, as appropriate.

Eligibles – those qualified persons to be chosen for appointment on the basis of any of the following (subject to possible suitability determination):

- (a) Having received a rating of seventy (70) or more under § 3809.3.
- (b) Having successfully completed an examination under § 3809.4.
- (c) Having being rated “Highly Qualified,” “Well Qualified,” or “Qualified” under § 3809.5; or
- (d) Having being rated “eligible” under § 3809.6.

Management Supervisory Service – all positions in the District of Columbia government as provided for in §§ 951 through 958 of the CMPA (D.C. Official Code § 1-609.51 *et seq.*) (2001).

Manager – an employee vested with the authority to direct the work of an organization, held accountable for the success of specific line or staff functions; responsible for supervision of staff, monitoring and evaluating the progress of an organization toward meeting goals, and making adjustments in objectives, work plans, schedules and commitment of resources. These positions shall serve as head or assistant head of a major organization, or direct a specialized project of marked difficulty, responsibility or community significance.

Minimum area of consideration – the agency in which a vacancy for competitive recruitment occurs, or a portion thereof.

Open competition – the use of examination procedures that permit application and consideration of all persons without regard to current or former employment with the District government.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in § 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2001).

Placement – term that includes the development and use of examinations that affect the measurement, ranking, and selection of individuals for initial appointment and subsequent assignment or promotion in the Management Supervisory Service.

Planned management action – an action wherein management has a recognized option or alternative to assign work between two (2) or more employees, and assigns the work to a particular employee.

Project – part of the mission, functions, programs, activities, laws, rules, and regulations which an agency is authorized and funded to administer or enforce. The focus of a project may be on providing products and services to the public, State and local government, private industry, etc. A project may be professional, scientific, technical, administrative or fiscal in nature. Typically, projects involve broad objectives such as protective services, law enforcement, public health, safety and well being of citizens, collection of revenue, regulation of trades, development and maintenance of information systems, delivery of benefits and services, etc. Included in this definition are specialized or staff projects that may be considerably narrower in scope, *e.g.*, human resources, contracting and procurement, and budget and fiscal operations. Projects are usually of such magnitude that they must be carried out through a combination of line and staff functions.

Promotion – the change of an employee while continuously employed, from one grade to a higher grade under the Management Supervisory Service Schedule, or between pay systems. When an action involves a change between two (2) pay systems (*i.e.*, from the District Service Schedule to the Management Supervisory Service Schedule), the action is a promotion if the representative rate of the grade to which changed is higher than the representative rate of the grade currently held by the employee.

Public official – an officer, an employee, or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated, to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.

Qualified candidates – those who meet established qualification requirements for the position, including any selective factors.

Reassignment – the change of an employee while continuously employed, from a Management Supervisory Service position to another Management Supervisory Service position of the same grade and without a change to the rate of pay of the employee being reassigned.

Register – a list of eligible applicants compiled in order of relative standing for certification.

Relative – an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

Selection certificate – list of eligible candidates from a register for appointment to a position submitted by a personnel authority to a public official.

Selective factors – knowledge, skills, or abilities essential for successful performance on the job, which represent an addition to the basic qualification standard for a position.

Sensitivity – the degree of public trust required of an incumbent of a position as determined by the personnel authority.

Suitability – the quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.

Supervisor – incumbent of a position that accomplishes work through the direction of other employees and meets at least the minimum requirements for coverage under the appropriate supervisory grade evaluation guide.

TAPER appointment – a time-limited appointment pending the establishment of a register when there are insufficient candidates on a register appropriate for filling a Management Supervisory Service position and the public interest requires that the vacancy be filled before eligibles can be certified.

Temporary promotion – a promotion for a definite period of thirty (30) days or more, not to exceed one (1) year, which may be extended for up to one (1) additional year.

Time-limited appointment – an appointment with a specific time limitation consistent with the anticipated duration of the programs, projects, problems, or phases thereof, requiring such services.

Transfer – a change, without a break in service of a full workday of a Management Supervisory Service employee to another Management Supervisory Service position under a different personnel authority.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Interim Director of Personnel, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 945, PHASE II, IN THE MATTER OF THE
INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND
REGULATORY PRACTICES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505, 34-302, and 34-1516 of the District of Columbia Official Code,¹ of its intent to adopt the following new Chapter 21 of Title 15 DCMR not less than 30 days after publication of this Notice of Proposed Rulemaking ("Notice") in the *D.C. Register*. The proposed new Chapter 21 will govern the construction of generating and transmission facilities in the District of Columbia. The Commission will take final rulemaking action in the above-captioned matter within 30 days from the publication of this Notice in the *DC Register*.

2. By Order issued March 11, 2002, the Commission directed the Retail Competition Working Group ("Working Group") to propose new or amended rules for current Chapter 21 of Title 15 DCMR, governing the construction of generating and transmission facilities.² The Working Group responded on April 30, 2002, and suggested a number of revisions.³ Although the March 11, 2002 Order invited interested parties to file comments on the Working Group's suggestions, no comments were received. The Commission incorporated most of the Working Group's suggestions into a Notice of Proposed Rulemaking, which was published on December 27, 2002, at 48 D.C. Reg. 11826-11848 (2002).

3. Both the Potomac Electric Power Company ("Pepco") and the Office of the People's Counsel ("OPC") filed comments. Pepco suggested a number of editorial changes, while OPC suggested that the Commission exempt from Chapter 21 all generation facilities that qualify for net metering under the Commission's regulations. However, at the time, the Commission had not yet approved a net metering method or

¹ D.C. Code, 2001 Ed. §§ 2-505, 34-302, and 34-1516.

² See *Formal Case No. 945, In the Matter of the Investigation Into Electric Service Market Competition and Regulatory Practices* ("F.C. 945"), Order No. 12340 at 5, rel. March 11, 2002. (In Order No. 11576, the Commission approved full settlement of Phase I in Formal Case No. 945 and directed the parties to establish the Retail Competition Working Group. The purpose of the Working Group is to make recommendations to the Commission on implementing retail competition in the District of Columbia.)

³ F.C. 945, letter from Paul Harrington, Associate General Counsel of the Potomac Electric Power Company, to Sanford M. Speight, Acting Commission Secretary, dated April 30, 2002.

established rules pursuant thereto. The Commission has since adopted a method of net metering and now proposes to exclude from Chapter 21 any generation facility that participates in net metering. The Commission also proposes to exclude small-scale distributed generation facilities from Chapter 21. The proposed new Chapter 21 of Title 15 DCMR reads as follows:

**CHAPTER 21 PROVISIONS FOR CONSTRUCTION OF
ELECTRIC GENERATING FACILITIES AND
TRANSMISSION LINES**

15-2100 APPLICABILITY

2100.1 This Chapter shall govern the construction of electric generating facilities, overhead transmission lines designed to carry sixty-nine thousand (69,000) volts or more, underground transmission lines in excess of sixty-nine thousand (69,000) volts as well as any substations connected to such lines. This Chapter shall not apply to generating facilities whose purpose is to enable the owner to participate in net metering nor shall it apply to small-scale distributed generation facilities as defined in these rules. No provision in this Chapter is intended to exempt a generating facility from any rules, tariffs, policies or guidelines that are designed to ensure safety or system reliability.

2100.2 No person shall construct an electric generating facility in the District of Columbia for the purpose of selling electricity unless the Commission first determines, after notice and a hearing that the construction of the facility is in the public interest. Nor shall any person construct an overhead transmission line designed to carry sixty-nine thousand (69,000) volts or over, or substation connected to such line, unless the project has been approved in accordance with this Chapter. Unless specifically required by law or other provision of this Chapter, Commission approval shall not be required for the routine repair and replacement activities necessary to maintain an electric generating facility or transmission line.

2100.3 Any person doing business in the District of Columbia who plans to construct a generating station or an overhead transmission line designed to carry sixty-nine thousand (69,000) volts or over in a state contiguous to the District of Columbia for which a Certificate of Public Convenience and Necessity is required by the state shall file with the Commission formal notice of this construction. This formal notice shall include the following information:

- (a) A general description of the generating facility or transmission lines;

- (b) A statement indicating the capacity or voltage involved;
- (c) A statement describing the site selected to construct the generating station or the area in which the transmission line would be located;
- (d) A statement indicating any alternative sites which have been considered;
- (e) An estimation of the cost involved;
- (f) An estimated in-service date; and
- (g) A statement indicating with which state or federal agency, commission, or department, if any, an application for approval of construction has been or is intended to be filed.

2100.4 The formal notice required under § 2100.3, shall be filed with the Commission on or before the date that the electric corporation files any application for approval of construction with a state or federal agency, commission or department.

15-2101 APPLICATION FILING REQUIREMENTS

2101.1 An application for approval of the construction of a generating facility, transmission line or substation covered under this Chapter shall include the following information:

- (a) The name and address of the principal place of business of the applicant;
- (b) The name, title, and address of the person authorized to receive notices and communications with respect to the application;
- (c) The location or locations where the public may inspect or obtain a copy of the application;
- (d) A list of each District of Columbia, state, or federal government agency having authority to approve or disapprove the construction or operation of the project and containing the following:
 - (1) A statement indicating whether the necessary approval from each agency has been obtained, with a copy of each approval or disapproval attached;
 - (2) A statement indicating the circumstances under which any necessary approval has not been obtained; and
 - (3) A statement indicating whether any waiver or variance has been requested, with a copy of each approval or disapproval attached.

- (e) A general description of the generating station under § 2102, or the transmission line under § 2104, and the alternatives considered under §§ 2103 and 2104, respectively;
- (f) The environmental information required under § 2108;
- (g) A statement of the engineering justifications for the project;
- (h) A statement of the safety considerations incorporated into the design, construction, and maintenance of the project;
- (i) A statement of the socioeconomic impact of the project;
- (j) A statement of contacts with community groups and the affected community;
- (k) A statement that the applicant has complied with all applicable environmental and zoning laws; and
- (l) A statement that the applicant has complied or will comply with the applicable PJM Interconnection, L.L.C. (PJM) tariff and requirements for the interconnection of new and expanded electric generating facilities within the PJM transmission system.

2101.2 The original application shall be:

- (a) Signed by a person having authority with respect to the application and having knowledge of the application; and
- (b) Verified under oath.

2101.3 All filings shall conform to the requirements of 15 DCMR Chapter 1. The Commission may, in its discretion, prescribe the form of the application.

2101.4 In addition to filing the application with the Commission, the applicant shall simultaneously serve one copy on the following agencies:

- (a) The District of Columbia Office of the People's Counsel;
- (b) The District of Columbia Department of Public Works;
- (c) The District of Columbia Corporation Counsel;
- (d) The Board of Zoning Adjustment;
- (e) The Office of Intergovernmental Relations;
- (f) The District of Columbia Energy Office;
- (g) The Metropolitan Washington Council of Governments, if affected;
- (h) The District of Columbia Zoning Commission;

- (i) The District of Columbia Office of Property Management;
- (j) The General Services Administration of the United States;
- (k) The Department of Consumer and Regulatory Affairs;
- (l) The Mayor's Office of Policy and Education;
- (m) The U.S. Environmental Protection Agency-D.C. Field Office;
- (n) The National Capital Planning Commission; and
- (o) PEPCO, if PEPCO is not the applicant.
- (p) The Advisory Neighborhood Commission(s) in which the generating facility or transmission line will be located.

2101.5 The applicant shall also serve a copy of the application on any other District of Columbia or federal agency that may be affected.

2101.6 The Commission shall publish notice of the application on its website.

2101.7 Failure to comply with the provisions of this section may result in the summary rejection of the application.

15-2102 DESCRIPTION OF GENERATING FACILITY

2102.1 The description of the generating facility shall include the following:

- (a) Location;
- (b) All important design and engineering features, including fuel requirements, heat rates, emission rates, space requirements, transportation facilities, water requirements and transmission requirements;
- (c) Operational features, including operation and maintenance personnel and equipment;
- (d) The schedule for engineering, construction, and operation of the generating stations;
- (e) The impact of the proposed generating station on system operations, reliability, reserve margins, and capacity factors;
- (f) A statement of the reasons for the selection of the design and the site of the generating facility, including the location and identification of the following sites from which the project would be clearly visible:

- (1) Residential structures;
- (2) Historical structure and land sites;
- (3) Institutional land, including school hospitals, and pre-school facilities;
- (4) Recreational area;
- (5) Aesthetic;
- (6) Archaeological;
- (7) Wildlife management area; and
- (8) Park or forest.

15-2103 ALTERNATIVE GENERATING FACILITY

2103.1 The description of each alternative design or site considered for a generating facility shall include the reasons for rejecting each alternative design or site.

15-2104 DESCRIPTION OF OVERHEAD TRANSMISSION LINE

2104.1 The description of a proposed overhead transmission line shall include the following:

- (a) A statement of the effect the project will have on system stability and reliability;
- (b) A statement of the consequences that will or may occur if the project is delayed or not approved;
- (c) A statement regarding the probability that the consequences of § 2104.1(b) will occur;
- (d) A description of the applicant's transmission planning criteria; and
- (e) A description of one-line diagrams regarding the power flows relied upon which determined the need for the proposed line.

2104.2 The description of the proposed transmission line shall also include, to the extent feasible at the time of application:

- (a) Engineering and construction features including the following:
 - (1) Width, length, and total acreage of the right-of-way;
 - (2) Line voltage;
 - (3) Number of circuits;

- (4) Number of circuits per structure;
 - (5) Structure type and dimensions;
 - (6) Conductor configuration and size;
 - (7) Nominal capacity (MVA);
 - (8) Nominal length of span between structures; and
 - (9) Description and dimensions of any related conduit.
- (b) Property or property right acquired or to be acquired;
- (c) Access roads for construction or maintenance either existing or to be built;
- (d) Location and identification of the following sites, from which the project would be clearly visible:
 - (1) Historical;
 - (2) Institutional land, including schools, hospitals, and pre-school facilities;
 - (3) Recreational area;
 - (4) Aesthetic;
 - (5) Archaeological;
 - (6) Wildlife management area;
 - (7) Park or forest; and
 - (8) Residential.
- (e) Location and identification of all portions or the right-of-way requiring construction within the one hundred (100) year floodplain of any stream;
- (f) Location and identification of any public airport one mile (1) or less from the transmission line; and
- (g) Depiction on a suitable topographic map (minimum one inch (1)-two thousand feet (2,000 ft.)) of the information required under § 2104.2(b)-(f).

15-2105 ALTERNATIVE OVERHEAD TRANSMISSION LINE ROUTES

2105.1 The description of each alternative route considered for the transmission line shall include the following:

- (a) An estimate of the capital and annual operating cost of each alternative route; and
- (b) A statement of the reason why each alternative route was rejected.

15-2106 PROJECT COORDINATING COMMITTEE

2106.1 Once an application has been properly filed, the applicant may request the formation of a project coordinating committee. If the request is approved, the Committee shall consist of the following members:

- (a) A chairperson, who shall be designated by the Commission;
- (b) A representative of the applicant;
- (c) A representative from the Office of the People's Counsel, if a notice of intent to participate on the committee is filed within ten (10) days of the date of the filing of a request to form a project coordinating committee;
- (d) A representative from each District of Columbia agency that has as follows:
 - (1) Authority to issue a license, permit, or authorization before the construction or operation of the project; or
 - (2) A direct interest in the project.
- (e) Pepco, if Pepco is not the applicant.
- (f) A representative designated by the Executive Office of the Mayor; and
- (g) A representative of any federal agency or independent systems operator that, in the Commission's view, has an interest in the project.

2106.2 The committee shall develop a coordinated time schedule for the review of the application by each committee member's agency or company and oversee the preparation of any environmental impact statement required by D.C. Code, 2001 Ed. §§ 8-109.01 to 8-109.11. Additionally, the committee shall provide the Commission with the following:

- (a) A list of proposed issues to be addressed in an application;
- (b) A list of any proposed analyses or studies regarding the proposed construction;
- (c) Recommendations concerning the timing, preparation, and submission of required materials;
- (d) Recommendations concerning compliance with the requirements of each committee member's agency; and

- (e) Any other information that the committee believes would be relevant.

2106.3 The committee is advisory in nature and shall not have authority to do the following:

- (a) Approve or disapprove an application;
- (b) Approve or disapprove proposed studies of the applicant;
- (c) Require or prohibit any action by a committee member; or
- (d) Require or prohibit any expenditure by a committee member.

15-2107 COMMUNITY ADVISORY GROUP

2107.1 In order to inform and educate the community regarding the construction and operation of any proposed project, the applicant shall convene a community advisory group.

2107.2 The applicant shall notify the public of the opportunity to participate in the community advisory group by providing written notice to the Advisory Neighborhood Commission(s) in which the facility or transmission line is to be located. In addition, the Commission shall post the applicant's notice on the Commission's website.

2107.3 The membership of the community advisory group shall include the following representatives:

- (a) The applicant;
- (b) Commission staff, which shall chair all meetings of the group;
- (c) The Advisory Neighborhood Commission of the community where the power plant or power line is to be located;
- (d) Interested members of the public; and
- (e) Any other persons the Commission deems appropriate.

2107.4 The advisory group shall convene public meetings and disseminate information to the community regarding the construction and operation of the proposed project.

2107.5 The advisory group shall not be authorized to take any specific action with respect to the construction or operation of the proposed project.

15-2108 ENVIRONMENTAL IMPACT STATEMENT

2108.1 The applicant shall submit an Environmental Impact Statement ("EIS"). At a minimum, the EIS shall evaluate the following potential environmental impacts:

(a) Air quality, National Ambient Air Quality Standards ("NAAQS"). The analysis of air quality shall include an analysis of the following six (6) criteria pollutants in the context of NAAQS:

- (1) Sulfur dioxide;
- (2) Nitrogen oxides;
- (3) Carbon monoxide;
- (4) Particulate matter (PM and PM10);
- (5) Ozone; and
- (6) Lead.

(b) Air Quality, other emissions: The analysis of air quality shall include all other emissions regulated for the utility industry under the Federal Clean Air Act;

(c) Surface and ground water resources. The analysis of surface and ground water resources shall include the following:

- (1) Water availability; and
- (2) Water quality, including discharge, storm water runoff, and potential spill events.

(d) Land use, socioeconomic, and aesthetic conditions: The analysis of these items shall evaluate, at a minimum, the following:

- (1) Appropriate zoning and compatibility with adjacent land use;
- (2) Impact on traffic;
- (3) Impact on cultural and historical resources; and
- (4) Visibility impacts in terms of air pollution effects and aesthetics.

(e) Noise conditions: The analysis of noise shall include the following:

- (1) A complete review of standards that will be met;
- (2) The points of measurement for noise impacts;
- (3) A comparison of the impact of the action to common outdoor sounds at that location; and
- (4) A complete explanation of the methodology used for the noise impact measurements.

- (f) Aquatic and terrestrial ecology resources: The analysis of aquatic and terrestrial ecology shall evaluate the impact upon the following:
 - (1) Fish;
 - (2) Wildlife;
 - (3) Vegetation; and
 - (4) Direct discharges into surface waters and impact on wetland habitats; and
- (g) Electric and magnetic fields (EMF): Until applicable laws governing EMF are enacted, the applicant shall submit the following information:
 - (1) An update of the general research on the health effects of EMF;
 - (2) The relationship of the proposed action to the increase or decrease of EMF, including any mitigating measures that could be employed to decrease EMF;
 - (3) The applicant's efforts to measure and better understand background EMF in the communities affected by the proposed action; and
 - (4) If and when laws are enacted, then the EIS shall demonstrate compliance with all applicable laws.

2108.2 Applicants seeking to construct a generating facility shall demonstrate the manner in which it will achieve compliance with the acid rain provisions of the Federal Clean Air Act. Until specific law is enacted regarding the emission of greenhouse gases, the applicant shall also report the greenhouse gas emissions for the proposed action, address the cost of possible mitigation of such gases through control or compensation, and state whether and to what extent the expected emissions are within the limits established by any applicable laws or regulations.

2108.3 Impacts of the items set forth in § 2108.1 shall be analyzed for all components at all stages of project life including the following:

- (a) Construction;
- (b) Operation; and
- (c) Retirement.

2108.4 The analysis of each of the items set forth in § 2108.1 shall include the following information:

- (a) A list of applicable regulations. The list shall identify the component of the proposed facility affected, the official designation of the regulation, and the agency responsible for enforcing the regulation;
- (b) An analysis of the environmental impacts resulting from current site use (or base line conditions if there is no existing facility at the site);
- (c) The potential environmental impacts resulting from the proposed action; and
- (d) A demonstration that the parties proposing the action, and those that will implement the action, have the qualifications to design, build, operate, and retire any planned facility.

2108.5 The applicant shall provide an analysis of the mitigation and externalities for the potential environmental impacts set forth in § 2108.1. For each impact the explanation shall include the following information:

- (a) A statement demonstrating that the proposed action will comply with all regulations applicable to the design, construction, operation and retirement of the proposed electric generating or transmission facility;
- (b) An analysis of the requirements that must be met to comply with the applicable regulations; and
- (c) A statement of whether the required permit, license, or other such authority has been secured and, if not, why not.

2108.6 The applicant shall indicate any steps taken, or to be taken, to mitigate the environmental impacts of the proposed action. These include steps taken either to comply with applicable regulations or to mitigate beyond the level required by regulations. Mitigation may include avoiding an impact altogether, minimizing an impact by limiting the scale of the action, rectifying an impact, reducing an impact through the addition of equipment or limitations on operations, or compensating for the impact. Any and all studies on mitigation must be made available as part of the EIS submission.

2108.7 In the context of all applicable regulations, the EIS shall discuss whether there are any adverse effects from externalities on the public health, welfare, and safety of the citizens of the District of Columbia.

2108.8 The EIS shall include evaluations of the full range of alternatives to the proposed action. The evaluation shall include, but is not limited to, a comparison of the environmental consequences of the alternative to that for the proposed action. The evaluation shall state the reasons the alternative was rejected in favor of the proposed action. At a minimum, the evaluation shall include the following alternatives:

- (a) Alternative sites for the proposed action, including the alternative of building a stand-alone power plant inside or outside the District. For transmission lines, alternative routes are the alternative sites that must be evaluated;
- (b) Alternative technologies for the proposed action, including supply-side and demand-side alternatives; and
- (c) Alternative environmental control strategies for the proposed action. The strategies shall include the following:
 - (1) Alternative designs;
 - (2) Equipment configurations; and
 - (3) Operating plans.

2108.9 The EIS shall include a statement as to whether the proposed action involves any irreversible and irretrievable commitment of resources.

Examples include the following:

- (a) A commitment to use fossil fuels; and
- (b) The use of previously undeveloped land for a power plant site or a transmission line right of way.

2108.10 The EIS shall include an analysis indicating whether the proposed action results in a net environmental benefit. Both direct and indirect environmental impacts may be used in the demonstration. For direct environmental impacts, the most acceptable demonstration is that the proposed action, as compared to the current situation, actually leads to a reduction in environmental impacts. For indirect impacts, the EIS may demonstrate that environmental impacts are reduced for some other activity beyond the scope of the proposed action.

Examples of an analysis of net indirect environmental benefits include the following:

- (a) The purchase of air pollution offsets at another existing facility in the District of Columbia so that the proposed action results in a net reduction in the District of Columbia of some air pollutants; and
- (b) The proposed facility providing fuel for electric or gas vehicles which, as compared to conventional vehicles, emit less air

pollution; the net environmental impact would then be in the form of the reduction of air pollution emissions by displacing conventional vehicles with low-pollution vehicles.

2108.11 The applicant shall submit an analysis of the cumulative risk of adverse health effects which includes the following:

- (a) Hazard Assessment: The hazard assessment identifies the pollutants that cause health risk concerns. The types of health risks that must be analyzed include the following:
 - (1) Cancer risks;
 - (2) Chronic non-cancer risks; and
 - (3) Acute non-cancer risks.
- (b) Exposure Assessment: The exposure assessment identifies the population at risk and the extent of exposure. Conservative assumptions shall be used in the exposure assessment. Exposure via multiple pathways shall include the following:
 - (1) Inhalation;
 - (2) Ingestion; and
 - (3) Dermal contact.
- (c) Risk Computation: The risk computation shall set the criteria by which risks will be judged. When technology-based or health-based standards are available from the District of Columbia or the federal government, then those standards set the criteria to be used in the risk computation. For cancer health risks, the applicant shall analyze the computed risk for cancer related health risks, against both a one in one hundred thousand and a one in one million standard;
- (d) Cumulative Risk Computation: The applicant shall explain and justify the extent to which risks reflect any possible interaction of one pollutant with another or the possible accumulation of pollutants from the proposed action with existing sources of pollutants. At a minimum, the applicant shall accumulate the lifetime health risk by pathway for the most exposed individual for pollutants attributable to all facilities affected by the proposed action when operated to the maximum extent possible. The applicant shall inform the Commission with respect to any interaction with existing environmental impacts (or baseline conditions) which would aggravate or diminish the incremental environmental impact of the proposed action; and

- (e) Uncertainty Assessment: The conservatism of the assumptions used in paragraphs (a) through (d) of this subsection shall be fully explained and justified.

2108.12 In addition to the EIS submitted by the applicant, the Commission may employ, and other interested persons may retain, an independent technical agent to conduct an EIS. The independent technical agent shall perform the same analysis required of the applicant.

2108.13 The applicant shall submit the following information, at a minimum, to describe the current situation:

- (a) A technical description of the current use of the proposed site;
- (b) Annual and monthly hours of operation over the five (5) year period preceding the date of application;
- (c) An explanation of any atypical or poor operating experience over the five (5) year period preceding the date of application. Included in any submission shall be an assessment of the possible consequences of atypical or poor operating experience in the future;
- (d) An analysis of the environmental impacts listed in § 2108.1, including all environmental test results used to measure those impacts over the five (5) year period preceding the date of application;
- (e) The applicant shall document that the environmental impacts resulting from the current situation comply with all applicable environmental regulations; and if not, what efforts will be made to ensure compliance; and
- (f) Any other information relevant to the characteristics of the current situation.

2108.14 The applicant shall submit the following information regarding the proposed action:

- (a) A technically complete and detailed description of the proposed action that shall include, at a minimum, the following:
 - (1) A description of the core facility; and
 - (2) All ancillary facilities, including on-site fuel and other material storage and cooling towers, as well as changes in off-site substations, transmission lines, and waste storage and disposal facilities.

- (b) A breakdown of the core and ancillary facilities by each component having a potential for environmental impact;
- (c) A technical description characterizing the equipment design and operation of the proposed action, which includes, at a minimum, the following information:
 - (1) Equipment specifications by component;
 - (2) Fuel use, by type over project life including a statement as to whether the facility will operate on renewable resources of power;
 - (3) Maximum and expected kw and kwh generation or transmission each year over project life;
 - (4) Maximum and expected production of outputs and products other than electricity each year over project life; and
 - (5) Any relevant maps, plats or layouts.
- (d) An executive summary that describes the proposed action using non-technical terminology.

2108.15 The EIS shall include information in the form of a list and description of the experience with the type of action proposed in either the District of Columbia or other, similar urban areas.

2108.16 The applicant shall demonstrate the need for a proposed action in the context of the other outputs and products the proposed action will produce other than electricity.

2108.17 The applicant shall demonstrate the impact of the proposed action in the context of applicable environmental plans, including the following:

- (a) The District of Columbia Comprehensive Plan; and
- (b) Any plans developed to assure the area attains federal ambient air quality standards for ozone and carbon monoxide, as well as any emissions for which the District may be in a state of non-compliance.

2108.18 The applicant shall analyze whether, and if so, how, the proposed action will impact, in any substantial way, the attainment of the goals of the environmental plans addressed in § 2108.17.

2108.19 The Commission may require additional assessments depending on the particular characteristics of the proposed action.

2108.20 All models and assumptions used by the applicant shall be fully documented and justified.

2108.21 If the applicant or project is covered by D.C. Code, 2001 Ed. §§ 8-109.03 *et seq.* or 34-2601 *et seq.*, the EIS shall conform to the requirements of those statutory provisions.

2108.22 The project coordinating committee established under § 2106 of this chapter shall coordinate the activities of the agencies in preparing any EIS or supplemental EIS which may be required pursuant to D.C. Code, 2001 Ed. § 8-109.01 to 8-109.11, or any other applicable statute.

15-2109 PHASED PROCEEDINGS ON THE APPLICATION

2109.1 The applicant may request, or the Commission may on its own initiative direct, that the project be reviewed in two (2) or more phases.

2109.2 If the Commission approves a phased proceeding, the matter shall proceed as follows:

- (a) An applicant may file a partial application;
- (b) The Commission may render separate findings of fact on any phase or issue within a phase; and
- (b) Findings of fact shall be final pursuant to D.C. Code, 2001 Ed. § 34-605(a), and may not be subject to further litigation unless warranted by new substantive issues or changed circumstances.

2109.3 In examining whether an applicant has complied or will comply with all applicable zoning and environmental laws, the Commission will rely, to the extent possible, on the expertise of the agencies charged with enforcement of those laws.

2109.4 In order to assure timely completion of the proceedings, the Commission may impose a schedule of procedural dates that are subject to change only for good cause shown.

15-2110 ANNUAL REPORT ON SMALLER SCALE CONSTRUCTION

2110.1 Electric corporations operating in the District of Columbia shall submit an annual report, on or before February 15th of each calendar year, which summarizes smaller-scale construction and the costs associated with each project undertaken by the corporation during the preceding year.

15-2111 UNDERGROUND TRANSMISSION LINES IN EXCESS OF SIXTY-NINE THOUSAND VOLTS AND SUBSTATIONS CONNECTED TO SUCH LINES

2111.1 An electric corporation which plans to construct inside the District of Columbia an underground transmission line in excess of sixty-nine thousand (69,000) volts, or substation connected to such line, shall file formal notice with the Commission six (6) months prior to the construction. This formal notice shall include a discussion of the following:

- (a) The name and address of the principal place of business of the electric corporation;
- (b) The name, title, and address of the person authorized to receive notices and communications with respect to the application;
- (c) The location or locations where the public may inspect or obtain a copy of the application;
- (d) A list of each District of Columbia, state, or federal government agency having authority to approve or disapprove the construction or operation of the project and containing the following:
 - (1) A statement indicating whether the necessary approval from each agency has been obtained, with a copy of each approval or disapproval attached;
 - (2) A statement indicating the circumstances under which any necessary approval has not been obtained; and
 - (3) A statement indicating whether any waiver or variance has been requested, with a copy of each approval or disapproval attached.
- (e) The proposed date construction is to be initiated;
- (f) The need for the underground transmission line or substation;
- (g) The type and voltage level(s) of the underground transmission line or substation;
- (h) Property or property right acquired or to be acquired;

- (i) Location of the proposed construction, including affected streets by name;
- (j) Duration of the proposed construction;
- (k) Impact of the proposed project on affected neighborhood and community; and
- (l) Possible mitigating measures which could be employed to minimize impact upon the affected neighborhood or community.

2111.2 Other provisions of this chapter shall not apply to underground substations and underground transmission lines.

2111.3 All information required in § 2111.1 shall be served on the affected Advisory Neighborhood Commission(s) and the Office of the People's Counsel on the same date it is filed with the Commission.

2111.4 The Commission shall entertain petitions filed by any interested person within ninety (90) days of the date of a formal notice provided under § 2111.1 for the Commission to investigate the reasonableness, safety and need for the underground transmission line or substation.

2111.5 If the Commission initiates an investigation, the electric corporation shall submit a detailed analysis of the information required in § 2111.1. The electric corporation shall also submit the following information:

- (a) An explanation of the need for and the cost-effectiveness of the project in meeting demand for service;
- (b) A description of the effect of the project on system stability and reliability;
- (c) A description of the consequences if the project is delayed or not approved;
- (d) A statement regarding the probability that the consequences of § 2111.5(c) will occur;
- (e) A description of the applicant's transmission planning criteria;
- (f) A description of one-line diagrams regarding the power flows relied upon which determined the need for the proposed line;
- (g) Engineering and construction features including the following:
 - (1) Width, length, and total acreage of the right-of-way;
 - (2) Line voltage;
 - (3) Number of circuits;

- (4) Number of circuits per structure;
 - (5) Structure type and dimensions;
 - (6) Conductor configuration and size;
 - (7) Nominal capacity (MVA);
 - (8) Nominal length of span between structures; and
 - (9) Description and dimensions of any related conduit.
- (h) Location and identification of all portions of the right-of-way requiring construction within the one hundred (100) year floodplain of any stream;
- (i) The description of each alternative route considered for the transmission line and alternative placement of a substation shall include the following:
 - (1) An estimate of the capital and annual operating cost of each alternative route or placement; and
 - (2) A statement of the reason why each alternative route or placement was rejected.
- (j) An analysis of potential impact upon the environment; and
- (k) Engineering and construction features of the alternative underground transmission line including the following:
 - (1) Width, length, and total acreage of the right-of-way,
 - (2) Line voltage;
 - (3) Number of circuits;
 - (4) Number of circuits per structure;
 - (5) Structure type and dimensions;
 - (6) Conductor configuration and size;
 - (7) Nominal capacity (MA);
 - (8) Nominal length of span between structures; and
 - (9) Description and dimensions of any related conduit.

2111.6 If no petition is submitted prior to the proposed date of construction, the electric corporation may begin construction pursuant to permits it receives from other District of Columbia agencies such as the Department of Public Works.

15-2112 WAIVERS AND MODIFICATIONS

2112.1 The Commission may, in its discretion, waive or modify any provision of this Chapter and may also impose additional requirements, as circumstances warrant.

2112.2 The applicant may, at the time of application, request that the Commission waive any provision in this Chapter for good cause shown.

15-2199 DEFINITIONS

2199.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Aesthetic Site - a site whose aesthetic nature is of general public interest or is officially recognized by a District of Columbia or federal agency charged with responsibility to oversee the protection of the environment.

Applicant - any person seeking approval to construct facilities covered by this Chapter.

Application - a request for approval to construct facilities covered by this Chapter.

Archaeological Site - a site within the District of Columbia yielding artifacts, structural remains, or evidence of occupation or use before the year 1900 as designated by the agency or governmental unit with responsibility for archaeological sites.

Certificate of Public Convenience and Necessity - an order issued by the Commission on application of a person granting such person the right to construct an electric generating station or transmission line covered by this Chapter.

Cogenerator - a power producer that qualifies as a cogenerator under the Public Utilities Regulatory Policy Act of 1978.

Commission - Public Service Commission of the District of Columbia.

Committee - the project coordinating committee.

Construction - any clearing of land, excavation, or other action that would affect the natural environment of the site or route of a bulk power supply facility. Construction is not a change needed for temporary use of a site or route for a non-utility purpose or for use in securing geological data, including borings necessary to ascertain foundation conditions.

Current Situation - another electric plant, overhead transmission line, other structure, facility or use which the proposed action will replace or otherwise affect.

Small-Scale Distributed Generation Facility - a facility with a capacity of no more than 100 kilowatts, located at, or in close proximity to, the end

user's location and uses small scale generating technologies such as cogenerators, microturbines, fuel cells, renewable resources like photovoltaics and wind and energy storage technologies such as batteries and flywheels.

Electric Corporation - pursuant to D.C. Code, 2001 Ed. § 34-207, an electric corporation includes an electric utility, cogenerator, small power producer, or independent power producer doing business in the District of Columbia.

Electric Plant - generating facilities or transmission lines to be used in connection with or to facilitate the generation, transmission, and distribution, sale or furnishing of electricity of sixty-nine thousand (69,000) volts or over, including cogeneration facilities, small power projects, independent power projects and PEPCO-owned electric plants.

Environmental Impacts - impacts upon the environment as defined by D.C. Code, 2001 Ed. § 34-2601 *et seq.*

Externality - any environmental impact that remains after mitigation.

Generating Station - property or facilities constituting an integral plant or unit for the production of electric energy, including any new production unit that would be added to an existing production plant.

Greenhouse Gas - any gas commonly deemed to contribute to global warming, including carbon dioxide (CO₂), methane (CH₄), chlorofluorocarbons (CFCs) and nitrous oxide (NOX).

Historical Site - a site within the District of Columbia duly registered by the: District of Columbia Historical Trust; National Register of Historic Places; National Register of Natural Landmarks; Register of National Historic Landmarks; and National Trust for Historic Preservation or any other agency as may be recognized by the Public Service Commission of the District of Columbia.

Independent Power Producer - a non-traditional public utility which produces and sells electricity but has no significant market power; lacks significant market power as a supplier of energy and capacity because it does not have captive customers; and has limited or no control of transmission facilities essential to their customers; or as defined under applicable law(s).

Net Metering - means measuring the difference between the electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and fed back to the electric grid by the eligible customer-generator.

Pepco - the Potomac Electric Power Company or any successor in interest.

Person - every individual, corporation, company, association, joint stock company, firm, partnership or other entity.

Project - a proposed generating station or overhead transmission line designed to carry voltage of sixty-nine thousand (69,000) volts or over.

Small Power Producer - a power producer that qualifies as a small power producer under the public utility regulatory policies act of 1978.

Smaller-Scale Construction - any construction project which involves providing electricity to a customer for which a Certificate of Public Convenience and Necessity is not required pursuant to this chapter.

Socio-economic Impacts - existing patterns of population concentration, distribution, or growth, and existing community or neighborhood characteristics, including traffic patterns and noise levels.

Substation - a plant that is used to alter the voltage of electricity. For the purposes of this chapter, substation must be connected to a transmission line of sixty-nine thousand (69,000) volts or over.

Transmission Line - property or facilities constructed as an overhead transmission line designed to carry a voltage of sixty-nine thousand (69,000) volts or over, or an underground transmission line designed to carry in excess of sixty-nine thousand (69,000) volts.

4. The proposed new rules are on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the proposed new and amended rules are available upon request, at a per-page reproduction cost.
5. Comments on the proposed new rules governing the construction of electric plants, setting forth the specific grounds for each representation, should be made in writing to Sanford M. Speight, Acting Commission Secretary, at the address listed above. Comments must be received within 30 days of publication of this Notice in the *DC Register*. Persons may also file reply comments within 45 days of publication of the Notice, after which time the Commission will take final rulemaking action.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 938 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Homemaker Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for homemaker services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for homemaker services.

On February 7, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 1235). These emergency rules amend the previously published rules by adding a section to limit the number of hours a client may receive homemaker services to ensure that total expenditures for all home and community-based services and other Medicaid services under the waiver do not exceed the amount that would be incurred by the State's Medicaid program for these individual in an institutional setting. This cost neutrality requirement is included in the Waiver application approved by the Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of homemaker services.

The emergency rulemaking was adopted on June 30, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until October 28, 2003 unless earlier superseded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Chapter 9 (Medicaid Program) of Title 29 DCMR by adding the following new section 938 to read as follows:

SECTION 938 HOMEMAKER SERVICES

- 938.1 Homemaker services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 938.2 Homemaker services shall consist of general household activities provided by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for themselves or others in the home.
- 938.3 Homemaker services eligible for reimbursement shall include, but not be limited to the following activities:
- (a) Light housekeeping duties;
 - (b) Laundry;
 - (c) Essential errands; and
 - (d) Meal preparation.
- 938.4 Homemaker services shall not be reimbursed when provided by a member of the client's family or by a provider, such as a group home provider, who is otherwise responsible for the service.
- 938.5 Homemaker services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 938.6 Each provider of homemaker services shall:
- (a) Be a public or private agency;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for homemaker services under the Waiver;
 - (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (d) Ensure that each homemaker services professional is qualified and properly supervised;

- (e) Ensure that the service provided is consistent with the client's IHP or ISP;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
- (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor as set forth in 29 CFR 1910.1030.

938.7 Each person providing homemaker services shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
- (d) Be able to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Complete pre-service and in-service training approved by MRDDA;
- (g) Have the ability to provide homemaker services consistent with the client's IHP or ISP;
- (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. 14-98, D.C. Official Code § 44-551 *et seq.*);
- (i) Have a high school diploma or general educational development (GED) certificate;
- (j) Have at least one year of work experience; and
- (k) Have completed a training course for homemaker services under

the Foundation for Hospice and Homecare National Certification Program for Homemaker-Home Health Aide, with emphasis on the needs of adults and developmental disabilities.

- 938.9 The billable unit of service for homemaker services shall be one hour.
- 938.10 Homemaker services shall be reimbursed at \$12.00 per hour.
- 938.11 Homemaker services shall be limited to eight (8) hours per week and shall not be billed concurrently with personal care services or attendant care services.

938.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease—Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan (IHP)—The plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP)—The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Comments on the proposed rules shall be submitted in writing to Wanda R. Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.